

E9TMCHA1

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA

4 v.

13 CR 345 (LGS)

5 ANTIONE CHAMBERS,

6 Defendant.

7 -----x

8 New York, N.Y.
9 September 29, 2014
9:30 a.m.

10 Before:

11 HON. LORNA G. SCHOFIELD,

12 District Judge

13
14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the
Southern District of New York

17 SANTOSH ARAVIND

NEGAR TEEKEI

18 Assistant United States Attorneys

19 JOSHUA L. DRATEL

WHITNEY SCHLIMBACH

20 Attorneys for Defendant

21 ALSO PRESENT: JOHN REYNOLDS, FBI

JENNIFER HANSMA, Paralegal AUSA

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(Case called)

MR. ARAVIND: Good morning, your Honor, Santosh Aravind and Negar Teekei for the government. With us at counsel table is Jennifer Hansma, who is a paralegal specialist with our office, and John Reynolds, a special agent with the FBI.

THE COURT: Good morning.

MR. DRATEL: Good morning, your Honor, Joshua Dratel for Mr. Chambers who is standing beside me. Ms. Schlimbach will be up here in a minute.

THE COURT: Good morning, everyone. Thank you for being prompt.

What we have first, as a first order of business today, is a Section 104 hearing to decide a, quote, preliminary question about whether a witness is qualified and privilege exists or evidence is admissible. Here the question is whether the evidence is admissible. And the evidence we are talking about has to do with a statement or nonstatement by Mr. Brown regarding Mr. Chambers. And so I would like to have that hearing now.

The one thing I would mention is that I had sent or I had asked my law clerk to send to the parties notice that I would like to hear about, quote, Brown's safety valve proffered statements which the government referenced in its September 24 submission to me. And I don't know if Agent Reynolds can talk

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1 about that when he's on the stand as well and whether you have
2 documents that relate to that.

3 MR. ARAVIND: He is planning to, your Honor, and just
4 for the Court's reference, I'm happy to hand up a copy. The
5 safety valve 302 is referenced in 3501-39, and the notes
6 underlying that safety valve are referenced in 3501-40.

7 THE COURT: I would be pleased to take a copy.

8 Are you prepared to start?

9 MR. ARAVIND: Yes, your Honor.

10 The government calls Special Agent John Reynolds.

11 JOHN REYNOLDS,

12 called as a witness by the Government,

13 having been duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. ARAVIND:

16 Q. Good morning.

17 A. Good morning.

18 Q. Can you please state and spell your name for the record.

19 A. Sure. First name is John, J-o-h-n. Last name is Reynolds,
20 R-e-y-n-o-l-d-s.

21 Q. Where do you work?

22 A. I'm currently a special agent with the Federal Bureau of
23 Investigation.

24 Q. How long have you been a special agent with the FBI?

25 A. Approximately eight years.

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Reynolds - direct

1 Q. What field office do you work in?

2 A. Currently assigned to the New York field office.

3 Q. What squad do you work in?

4 A. Squad C11.

5 Q. What are your duties and responsibilities, Special Agent,
6 as a member of C11?

7 A. Our squad investigates drug trafficking crimes, crimes of
8 violence related to drug trafficking, and we are also
9 responsible for extraterritorial matters in Africa and Europe.

10 Q. Before the FBI, what did you do for a living?

11 A. I was a New York City police officer.

12 Q. What types of cases did you investigate as a New York City
13 police officer?

14 A. As a police officer I was a regular uniformed police
15 officer, and my last four years I was an anticrime police
16 officer, which dealt with mostly firearm-related arrests and
17 other violent street crimes.

18 Q. Special Agent Reynolds, have you ever participated in
19 postarrest interviews of defendants?

20 A. Yes.

21 Q. Approximately how many postarrest interviews have you
22 conducted or participated in as a member of the FBI?

23 A. At least 50.

24 Q. What about as a member of the NYPD?

25 A. Over a hundred.

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Reynolds - direct

1 Q. Special Agent Reynolds, are you familiar with an
2 investigation of Tyrone Brown, Steven Glisson and Antione
3 Chambers?

4 A. Yes, I am.

5 Q. What was your role with respect to that investigation?

6 A. I was the FBI case agent.

7 Q. What does it mean to be the FBI case agent?

8 A. You do everything that a typical detective or investigator
9 does, subpoenas, search warrants, interviews, arrests. Also,
10 you are like a manager. Like in a case like this, you would
11 liaison a lot with a lot of law enforcement agencies like in
12 this case the New York Police Department and the U.S.
13 Attorney's Office.

14 Q. Did there come a time when you participated in an arrest of
15 Tyrone Brown?

16 A. Yes, sir.

17 Q. What day was that?

18 A. April 8, 2013.

19 Q. At the time was Brown arrested on federal charges?

20 A. When I first met Mr. Brown and spoke with him, he was under
21 arrest for state charges.

22 Q. What were those state charges?

23 A. Narcotics possession.

24 Q. What did you do that day?

25 A. It was the evening. I was at home. I received a telephone

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Reynolds - direct

1 call from Detective Ellis Deloren of the Bronx robbery squad
2 from the New York City Police Department notifying me that he
3 had arrested Tyrone Brown for drug charges and that Tyrone
4 Brown was currently at his office in the Bronx, at which time I
5 responded to the Bronx robbery squad.

6 Q. What did you do when you got to the Bronx robbery squad
7 office?

8 A. I briefly spoke with detective Deloren regarding the
9 circumstances of Mr. Brown's arrest, and after that we began to
10 interview Mr. Brown.

11 Q. Did you administer Miranda warnings?

12 A. Yes, I did.

13 Q. Orally or in writing?

14 A. Both. First I read verbatim the Miranda warning forms for
15 the FBI. And following reading those warnings to Mr. Brown and
16 explaining and ensuring that he understood those, I also
17 provided him a copy of the Miranda form, provided him an
18 opportunity to review it himself.

19 Q. Did he do that?

20 A. Yes, he did.

21 Q. Did he waive his Miranda rights?

22 A. Yes, he did.

23 Q. In what way did he waive his Miranda rights?

24 A. He signed the form.

25 Q. Did Mr. Brown make any statements --

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Reynolds - direct

1 THE COURT: Just so I'm clear, was this all before he
2 made any statements to you?

3 THE WITNESS: Yes, ma'am.

4 THE COURT: Thank you.

5 Q. After signing the Miranda form, did Mr. Brown make any
6 statements?

7 A. Yes, sir.

8 Q. What, if anything, did Mr. Brown tell you about the
9 identity of the robbers who robbed Emma Torruella and David
10 Barea?

11 A. Mr. Brown at first denied knowledge of both robbers or the
12 robbers involved. He eventually acknowledged that somebody
13 known to him as Dee. We later identified as Steven Glisson.

14 THE COURT: D, so it's clear for the reporter, D as in
15 dog?

16 THE WITNESS: Yes, ma'am. He eventually identified
17 Mr. Glisson as one of those robbers.

18 THE COURT: What did he say about Dee that led to his
19 ultimately identifying him as Glisson?

20 THE WITNESS: Based on our interviews of the victims,
21 we already knew the identity of Dee and Mr. Glisson. So when
22 he was referring to somebody as Dee, he -- not at first. He
23 claimed not to know him. He eventually identified a photograph
24 that we had of Mr. Glisson as Dee, as the person he was
25 referring to as Dee.

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Reynolds - direct

1 THE COURT: So he said the guy was Dee?

2 THE WITNESS: Yes, ma'am.

3 THE COURT: And then you showed him a photograph and
4 he confirmed that was it?

5 THE WITNESS: Correct. As first he wouldn't ID him,
6 and eventually later on in an interview he did identify him.

7 Q. What about the second robber. What did Mr. Brown say with
8 respect to the second robber?

9 A. For much of the interview he claimed to have no knowledge
10 of the other robber. And then as we concluded the interview or
11 at the very end of the interview he said he had seen this
12 person before. And after he was pressed some more he said he
13 goes by the name of T or he knows him as T, something to that
14 extent.

15 Q. Approximately how long did this interview last?

16 A. Over three hours.

17 Q. Who was asking questions during the interview?

18 A. Both Detective Deloren and myself.

19 THE COURT: What else, if anything, did he say about
20 T?

21 THE WITNESS: It was somebody that he had just seen a
22 couple of times. Like I said, at first he claimed not to know
23 the person at all. Then he eventually said he had seen him
24 before only a couple of times. And then, again, when he is
25 pressed some more then he finally says, I think he goes by the

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Reynolds - direct

1 name of T or he goes by the name of T.

2 THE COURT: Did you try to get him to ID a photograph?

3 THE WITNESS: No, ma'am.

4 Q. Why not?

5 A. When the context of T came up, like I said, it was towards
6 the end of the interview and much of the interview with
7 Mr. Brown had progressed from, again, I don't know anything;
8 okay, I know a little bit; okay, I do know this. And, again,
9 T -- the reference to T came up at the very end of the
10 interview and it was the same thing. I don't know him at all.
11 Okay, maybe I've seen him before. Okay, maybe his name is T.

12 We had decided it's already midnight for the
13 interview. We thought Mr. Brown was going to be someone who
14 was going to cooperate. We figured we could follow up on this
15 point at a later time. And plus the information that he
16 provided us we believed him not to be completely truthful and
17 it was not enough information to go back to a computer and do a
18 search for a likelihood of a photo that we could then show him.

19 THE COURT: You had a photo with you of Glisson, but
20 you didn't have a photo with you of Chambers. Is that right?

21 THE WITNESS: Yes, ma'am. Because at that time the
22 only person that we knew for sure or at least in our minds for
23 sure that had participated in the robbery, again, based on the
24 victims, was Mr. Glisson. So that was the only photo that we
25 had at that time.

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Reynolds - direct

1 THE COURT: Thank you.

2 Q. Just to be clear, was Antione Chambers a target of your
3 investigation at the time of the postarrest interview, April 8,
4 2013?

5 A. Not only was he not a target, he was somebody I had no
6 knowledge of at all.

7 Q. Did you have a photograph of Mr. Chambers with you during
8 your postarrest interview of Mr. Brown?

9 A. No, sir.

10 Q. Was anyone taking notes during the postarrest interview?

11 A. Yes, sir.

12 Q. Were those notes a verbatim recitation of what Brown told
13 you?

14 A. No, sir.

15 Q. Was the postarrest statement --

16 THE COURT: Who was taking the notes?

17 THE WITNESS: I was.

18 Q. Was the postarrest statement recorded, either video or
19 audio recorded?

20 A. No. At that time it was not. The FBI's policy to record
21 such interviews. And, in addition, at that time the rule
22 actually was, if you wanted to record an interview you had
23 actually had to get special permission to do so.

24 THE COURT: And since Brown inculcated himself, why
25 didn't you have him sign something?

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Reynolds - direct

1 THE WITNESS: Again, that's just not the FBI policy.
2 That's not how we do things. When I was a police officer, yes,
3 that was something that I had done in the past, was to actually
4 either have the defendant write a statement and then sign it,
5 or even if the person was unable or unwilling to, maybe we
6 would write something and have him sign it. But that's not the
7 way the FBI conducts those types of interviews.

8 MR. ARAVIND: With the Court's permission I would like
9 to show Special Agent Reynolds two documents, 3501-04 and
10 3501-05.

11 THE COURT: You may.

12 Q. Do you recognize, Special Agent Reynolds, those two
13 documents?

14 A. I do.

15 Q. What are they?

16 A. 3501-04 is my FBI report 302 regarding our interview of
17 Mr. Brown on the 8th, and 3501-05 are my notes.

18 THE COURT: If I wanted to look at that, are they in
19 these notebooks?

20 MR. ARAVIND: Yes. And I think I handed up a set for
21 your Honor.

22 THE COURT: I have 3501-39 and the second page of
23 that, and then I have 3501-40, which is three pages, but I
24 don't seem to have 04 and 05.

25 MR. ARAVIND: I thought I handed it up to your Honor.

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Reynolds - direct

1 THE COURT: This is all I have.

2 MR. ARAVIND: We can hand up another copy.

3 THE COURT: Am I meant to have 3501-40?

4 MR. ARAVIND: I have not shown the witness yet, but
5 you should have all relevant documents.

6 Your Honor, the government offers for purposes of this
7 hearing 3501-4 and 3501-5.

8 THE COURT: The usual rules of evidence don't apply in
9 104 conferences. So I will go ahead and accept these at
10 Court's Exhibit 1 and 2, 04 being 1 and 05 being 2.

11 Q. Special Agent Reynolds, can you explain to Judge Schofield
12 how you went about taking notes and how those notes turned into
13 a 302?

14 A. Sure. The notes, obviously, I take during the interview.
15 I try to write down a fair amount as much as I can. Certainly
16 the parts, the significant parts at the conclusion of the
17 interview, either that day, the next day or some days
18 afterwards. I'll sit down and use the notes to draft my 302.

19 Q. When was the 302 drafted as compared to the interview of
20 Mr. Brown on April 8, 2013?

21 A. The interview and notes, obviously, were done on the 8th,
22 and the 302 was drafted on the 10th.

23 Q. Now, Special Agent Reynolds, on the 302 there is a
24 reference to a, quote unquote, unidentified male. Was that
25 Mr. Brown's term or your term?

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1 A. No. That's my term, signifying that I don't have an
2 identity for that person to whom he is referencing.

3 Q. And that person was the second robber that was subsequently
4 identified as Antione Chambers?

5 A. Yes, sir.

6 Q. Had you identified Chambers at that point?

7 A. No.

8 THE COURT: Is there anything in the notes that refers
9 to T or the second robber?

10 THE WITNESS: No, ma'am.

11 THE COURT: Nothing at all?

12 THE WITNESS: No, ma'am.

13 Q. Why not?

14 A. As I said earlier, that came at the conclusion of the
15 interview, when we were getting ready to take Mr. Brown from
16 the Bronx robbery office down to 26 Federal Plaza for
17 processing. And I wasn't at that point taking notes.

18 Additionally, like I said before, Mr. Brown was
19 indicating to us that he was going to be somebody that was
20 willing to cooperate and we figured that if we could follow up
21 at a later point, also, coupled with the fact that we didn't
22 believe him to be truthful at that point in time. If it was a
23 piece of information that we could have followed up on, again,
24 we would have printed pictures, shown it to him. He had
25 concluded the interview.

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Reynolds - direct

1 THE COURT: When you said that you didn't believe him
2 to be truthful at that time, what caused you to think that he
3 wasn't being truthful?

4 THE WITNESS: Again, like I had said earlier in the
5 interview, not even in reference to T, but, again, I don't know
6 what you are talking about; okay, I know a little bit what
7 you're talking about. The T thing had progressed the same way.
8 The entire interview he had said there was somebody that he did
9 not know and, okay, I saw him -- maybe I've seen him before.
10 Okay. I have seen him before. Okay, maybe he goes by the name
11 T. That's why.

12 Q. Can you give us another example of a statement that Brown
13 made at the time that you did not believe to be truthful?

14 A. Sure. Even in the 302 references that he called
15 Mr. Glisson during the time frame of the robbery, a review of
16 Mr. Brown's phone records for that day indicate that not only
17 did he not call Mr. Glisson at the time of the robbery or that
18 day, at least the telephone number that we have for
19 Mr. Glisson, in fact, he was in contact with the phone number
20 that we believed to be Mr. Chambers's phone number.

21 THE COURT: What did you know at the time you were
22 interviewing him about the truthfulness of the statement that
23 he called Glisson?

24 THE WITNESS: At that time we didn't know that. That
25 was a later -- we determined that later to be not truthful.

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Reynolds - direct

1 Q. Can you give us an example of something he said to you
2 during the interview that you believe knowing then not to be
3 true?

4 A. Sure. Like I had said before, he said Mr. Glisson was
5 coming there to buy crack from Mr. Barea, and then later on in
6 the interview he says, okay, I knew that they were coming to
7 rob Mr. Barea. That's one example.

8 Q. Just to be clear, initially he said that Glisson was coming
9 to purchase crack from Mr. Barea, the victim?

10 A. Right.

11 Q. What did he say later on during the interview?

12 A. He said that he was coming -- that he knew that Mr. Glisson
13 was looking to rob Mr. Barea.

14 Q. Now, in your training and experience, Special Agent, of
15 interviewing defendants, is it common for defendants to be
16 fully accurate during a postarrest interview?

17 A. No, sir. As a matter of fact, this is, I don't want to say
18 typical, but not uncommon. Again, it starts --

19 MR. DRATEL: Objection as to what's typical or common.

20 THE COURT: Overruled. The usual rules of evidence
21 don't apply.

22 A. This was a case of minimization. I'm sorry. I don't like
23 to keep repeating myself. I don't know anything; okay, I know
24 a little; I know a little bit more.

25 Q. What does minimization mean?

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Reynolds - direct

1 A. Minimizing their knowledge or role of what you're asking
2 about.

3 Q. During the course of an interview do you confront a
4 defendant with information?

5 A. Sure.

6 Q. And what is the result or what was the result when you
7 confronted Mr. Brown with information during his postarrest
8 interview?

9 A. It would -- he would maybe admit like a little more --
10 again, he wouldn't identify Mr. Glisson, somebody that we knew
11 he knew. He wouldn't even identify Mr. Glisson as Dee until we
12 confronted him with video from the cell phone that he was
13 hanging out with him.

14 Q. Did you document all of the lies and inaccuracies that
15 Mr. Brown told you during the postarrest interview?

16 A. No, sir.

17 Q. Why not?

18 A. For several reasons. First of all, 302 never purports to
19 be a verbatim statement or transcript of the interview. It
20 merely represents a summary of what's going on. Also, the lies
21 become repetitive and we don't necessarily document all of
22 them. I think this 302, for example, documents that Mr. Brown
23 was lying during the interview. And then, also, documenting
24 every lie isn't necessarily fruitful in terms of investigative
25 leads.

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Reynolds - direct

1 Q. Did there come a time when you interviewed Mr. Brown again?

2 A. Yes.

3 Q. When did that take place?

4 A. I believe in May of 2013.

5 Q. In what context?

6 A. In a safety valve proffer.

7 MR. ARAVIND: With the Court's permission I would like
8 to hand up Government's Exhibit 3501-39 and 3501-40.

9 THE COURT: We will mark that as Court's Exhibit 3.

10 MR. ARAVIND: These are two separate documents, your
11 Honor.

12 THE COURT: And 4. And the lowered number will be 3
13 and the higher numbered one will be 4.

14 While we are doing that, can you tell me what a safety
15 valve proffer is?

16 THE WITNESS: Yes, ma'am. If somebody is arrested on
17 federal drug charges and they don't have a prior drug
18 trafficking history, they are offered the opportunity to come
19 in and meet with the U.S. Attorney's Office and law enforcement
20 to go over their drug trafficking history. If they are honest
21 at that proffer it allows their sentencing judge to give them
22 relief from the mandatory minimum sentences.

23 Q. Do you have those documents in front of you?

24 A. I do not.

25 MR. ARAVIND: Judge, I think you have a set. That was

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1 for the witness. Thank you, Judge.

2 Q. Just so the record is clear, what is 3501-39?

3 A. 39 is my 302 report of Mr. Brown's safety valve proffer.

4 Q. And 3501-40?

5 A. 3501-40 are notes taken my partner, Special Agent Kim
6 Marcus, of that interview.

7 MR. ARAVIND: Again, your Honor, we would offer these
8 for the purposes of the hearing.

9 THE COURT: Okay.

10 Q. Who was present during the safety valve proffer?

11 A. At the safety valve proffer was Tyrone Brown, his defense
12 attorney, myself, Special Agent Kim Marcus from the FBI,
13 Detective Ellis Deloren from the New York City police
14 department and Amy Lester from the U.S. Attorney's Office.

15 Q. What, if anything, did Brown say about Chambers, T, or
16 Twizzie during the safety valve proffer?

17 A. We had asked Mr. Brown specifically about Mr. Chambers or
18 Twizzie, had he ever conducted any drug business with Twizzie.
19 He first tried to deny knowing somebody named Twizzie and then,
20 realizing that we had had his phones, he goes, oh, my phones,
21 and he said that Twizzie was somebody that he barely spoke to
22 and that he last saw in 2012, and that he had not conducted any
23 drug trafficking with him.

24 Q. That incident, was that reflected in Special Agent Marcus'
25 notes and in your 302?

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1 A. Yes.

2 Q. Had you reviewed Brown's phone at the time?

3 A. Yes.

4 Q. Is there a contact for Twizzie in Mr. Brown's phone?

5 A. Yes, there is.

6 THE COURT: In the safety valve proffer Mr. Brown did
7 not identify Twizzie as being the second robber?

8 THE WITNESS: No. Because, if I may, any safety valve
9 proffer --

10 THE COURT: That's not the point.

11 THE WITNESS: Not just not the point. We are not
12 allowed to ask about anything else other than drug trafficking
13 related stuff. So we never asked him to identify or to --
14 about Mr. Chambers' or Twizzie's role in the robbery.

15 THE COURT: Got it. Thank you.

16 Q. Was it your belief at the time that the statements made by
17 Mr. Brown at the safety valve proffer were consistent or
18 inconsistent with the statements made by Mr. Brown initially at
19 the postarrest statement?

20 MR. DRATEL: Objection. Relevance.

21 THE COURT: I'll allow it.

22 A. I'm sorry. Could you repeat the question.

23 Q. I'll ask it more broadly. Were the statements that
24 Mr. Brown made at the safety valve proffer consistent or
25 inconsistent with the statements he made during his postarrest

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1 interview?

2 A. Inconsistent.

3 Q. And how so?

4 A. Again, he really wouldn't identify T.

5 THE COURT: At which time or both?

6 THE WITNESS: He is claiming that there is somebody
7 named T. I wouldn't consider that an identification. But I'm
8 a little confused by the question.

9 Q. Let me take a step back. In the initial interview,
10 postarrest interview on April 8, Tyrone Brown said he did not
11 know the individual, the second robber who was subsequently
12 identified as Antione Chambers?

13 A. Yes.

14 Q. Is that statement consistent or inconsistent, in your mind,
15 with the statement he made at the safety valve proffer?

16 MR. DRATEL: Objection, again, for the record.

17 THE COURT: I understand.

18 A. Yes. I believe it to be inconsistent. Like I said, the
19 only person that Brown had telephone conversations with at the
20 time of the robbery was a 717 area code number that was listed
21 in his phone under the contact Twizzie.

22 THE COURT: So I get it, during the postarrest
23 statement he said that the second robber was someone he had
24 seen before and he knows him as T and he had just seen him a
25 couple of times. Is that right?

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1 THE WITNESS: Yes, ma'am.

2 THE COURT: And then during the 302 proffer he said at
3 first that he didn't know Twizzie, someone he had barely spoken
4 to and he last saw him in 2012. Did you have any reason to
5 believe that the Twizzie he was talking about during the
6 proffer was the same person as T that he was talking about
7 during his postarrest statement?

8 THE WITNESS: Yes.

9 THE COURT: And what was the basis for believing that?

10 THE WITNESS: The telephone contact. Again, looking
11 at Brown's phone records, the only person he spoke to at the
12 time of the robbery was the telephone number associated with
13 the Twizzie contact from his phone.

14 THE COURT: Did he ever refer to the person you were
15 calling Twizzie in the proffer as T?

16 THE WITNESS: No, ma'am.

17 Q. Did you ever, Special Agent Reynolds, refer to Antione
18 Chambers as T in any reports that you prepared or documents
19 that you assisted in the preparation of?

20 A. Yes.

21 Q. And can you explain that to the judge?

22 A. Yes. Following the postarrest statement, I believe in
23 early June we sought a cell site order from the Court for
24 historical cell site records for a phone number that we
25 believed to be associated with Antione Chambers. And in

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1 preparation of that order I notified Ms. Lester, the Assistant
2 United States Attorney that was working on the case at the
3 time, that Brown had referred to the second person in the
4 robbery as T.

5 MR. ARAVIND: With the Court's permission I would like
6 to show the witness 3501-42.

7 THE COURT: Do you have a copy for me?

8 MR. ARAVIND: I do, your Honor.

9 THE COURT: It's probably in this notebook.

10 MR. ARAVIND: It's in the notebook.

11 THE COURT: I will just look there.

12 Q. What is this document, Special Agent Reynolds?

13 A. It's an order. It's a draft of the order requesting
14 historical cell site information prepared by Ms. Lester.

15 Q. Did you have any role in drafting or providing information
16 about this cell site order?

17 A. Yes. Prior to her preparation, I had discussed the cell
18 site order with Ms. Lester.

19 Q. I want to direct you to the fourth page of this document.

20 A. Yes.

21 Q. On paragraph 4B.

22 Do you see that?

23 A. I do.

24 Q. It says: On or about April 8, 2013, resident 1 was
25 interviewed by law enforcement agents about the circumstances

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1 of the May 25 robbery.

2 THE COURT: March 25.

3 MR. ARAVIND: I'm sorry. March 25. Thank you, your
4 Honor.

5 Q. Who is resident 1?

6 A. Mr. Brown.

7 Q. Now, the last sentence of this paragraph, can you read that
8 for the judge?

9 A. Yes. Resident 1 also stated that the second robber was
10 known to him as T.

11 THE COURT: That's the bottom of paragraph B, right?

12 THE WITNESS: Yes, ma'am.

13 Q. Just, again, what does that sentence refer to?

14 A. That refers to the statements made by Mr. Brown and the
15 April 8, 2013 postarrest interview.

16 MR. ARAVIND: Your Honor, may I have one moment?

17 THE COURT: Sure.

18 Q. Looking back on it, Special Agent Reynolds, is the
19 reference to T, is that something that should have been in your
20 notes?

21 A. In hindsight, yes, sir.

22 Q. And should that have been in your 302?

23 A. Yes.

24 MR. ARAVIND: No further questions, your Honor.

25 THE COURT: Cross.

E9TMCHA1

Reynolds - direct

1 CROSS-EXAMINATION

2 BY MR. DRATEL:

3 Q. Good morning, Agent Reynolds.

4 A. Good morning.

5 Q. Let's go back to April 8, right, when you were called by
6 Detective Deloren?

7 A. Yes, sir.

8 Q. And why did he call you?

9 A. Because he had informed us about the robbery and we had
10 agreed to help him.

11 Q. When you say he had informed us about the robbery, we
12 agreed to help him, what did you mean by that?

13 A. Detective Deloren, prior to the 8th, had called us to tell
14 us that he was investigating the home invasion and robbery that
15 had occurred on March 25 at 1338 Croes Avenue. We have worked
16 cases before with the Bronx robbery squad and he asked for our
17 assistance and we agreed to help him.

18 Q. You went to the Bronx to a police station, correct, Bronx
19 robbery?

20 A. To their office, yes.

21 Q. So that's an NYPD facility, right?

22 A. Yes, sir.

23 Q. And Brown was not under arrest by you at the time, was he?

24 A. No, sir.

25 Q. So when you talk about the FBI's taping policy, in fact,

E9TMCHA1

Reynolds - cross

1 NYPD has a taping policy, right?

2 A. I believe they have some sort of policy. I don't know what
3 that policy is.

4 Q. They have a policy of getting signed statements by people
5 who are interviewed, right? You were a police officer,
6 correct?

7 A. Yes.

8 Q. How long were you a police officer?

9 A. Six years.

10 Q. And NYPD has a policy of getting signed statements by
11 persons who confess, correct?

12 A. I am not sure if there is a policy about getting --

13 Q. That's the intention, correct? That's the objective?

14 A. It's something --

15 Q. It's not against policy like the FBI where you don't do it?

16 A. Yes, sir.

17 Q. This was a state interrogation in a state facility
18 basically under the auspices of the NYPD, not the FBI, correct?

19 A. No, sir. I was specifically there to interview him in
20 regards to the investigation that we had opened into the March
21 25 robbery.

22 Q. But it was in the Bronx station house, right?

23 A. Yes, sir.

24 Q. And Detective Deloren did not participate at all in the
25 interview?

E9TMCHA1

Reynolds - cross

1 A. No, sir. He participated.

2 Q. He asked questions, too, right?

3 A. Yes, sir.

4 Q. He could have taped it, right?

5 A. I am not sure as to their policy in regards to taping.

6 Q. You don't know the NYPD policy with respect to taping?

7 MR. ARAVIND: Objection. Asked and answered.

8 THE COURT: I'll allow it. Go ahead.

9 A. No, sir.

10 Q. You know that the NYPD tapes interviews for now, right?

11 You know that?

12 A. Do I know it's a policy for them to tape interviews?

13 Q. You know they tape interviews?

14 MR. ARAVIND: Objection. If you could let the witness
15 answer the question.

16 THE COURT: Please let the witness answer.

17 MR. DRATEL: Let me rephrase it.

18 Q. You know that NYPD tapes interviews now and as of 2013,
19 April 2013, you knew that NYPD videotaped interviews, right?

20 A. Do they have that capability, yes.

21 Q. No. You knew that they did it, right?

22 A. I don't know what the NYPD's policy is --

23 Q. I didn't ask about policy. You listen to the question and
24 answer the question, which is, you knew that NYPD tapes
25 interviews of confessions, correct?

E9TMCHA1

Reynolds - cross

1 A. They can.

2 Q. Do you know that it's done, right?

3 A. Have they done it, yes.

4 Q. And you know that?

5 A. Yes.

6 Q. That would have been the simplest answer right away?

7 MR. ARAVIND: Objection.

8 THE COURT: Go ahead.

9 Q. What's your training of taking notes?

10 A. I don't believe we have specific training regarding taking
11 notes.

12 Q. What's your training on 302s?

13 A. Training that you receive at the academy.

14 Q. What is that?

15 A. Just in general. You take notes during an interview and
16 you prepare the report based on your memory of the notes of the
17 interview.

18 Q. What does it say, leave out important stuff or put in
19 important stuff?

20 A. Put in important stuff.

21 Q. Put in detail?

22 A. As much as you can.

23 Q. If you got two perpetrators to a robbery, do you want to
24 put in whatever you know about each robber?

25 A. Sure.

E9TMCHA1

Reynolds - cross

1 Q. Particularly the one you have not identified yet?

2 A. Sure. If I have been given a good identity of that person,
3 that would have been included.

4 Q. Let's talk about the purposes of 302s. One of the purposes
5 is to get down on paper contemporaneously what you've heard,
6 right?

7 A. I'm sorry. Could you repeat that?

8 Q. Sure. To get down on paper contemporaneously with the
9 interview as quickly as possible what you've heard so that you
10 have a record of it, right?

11 A. Yes, sir.

12 Q. Because right now we are what, 18 months after the
13 interview, right?

14 A. Yes, sir.

15 Q. And you got to know right then what it is because 18 months
16 you might not remember everything, right?

17 A. Yes, sir.

18 Q. And it's also to help the investigation, correct?

19 A. Yes, sir.

20 Q. Because someone else may be looking at this 302 for
21 purposes of assisting in your investigation and you, in fact,
22 furthering your own investigation, correct?

23 A. A 302 never contains everything that was said in the
24 interview.

25 Q. That's not my question. It's supposed to help you further

E9TMCHA1

Reynolds - cross

1 the investigation, correct?

2 A. Correct.

3 Q. And at the time that you prepared this 302 there was one
4 outstanding issue in this robbery, right?

5 A. No, sir.

6 Q. You knew it was Glisson was one of the robbers?

7 A. Yes, sir.

8 Q. You knew Brown had some involvement in the robbery,
9 correct?

10 A. Yes, sir.

11 Q. And you knew who the victims were, right?

12 A. Yes, sir.

13 Q. There was one thing you didn't know, right, the identity of
14 the second robber?

15 A. No, sir.

16 Q. You knew the identity of the second robber when you did
17 this interview?

18 A. No, sir. We didn't know the identity of that robber --
19 there was a lot of outstanding questions, one being the
20 identity of that person that Mr. Brown was referring to. Also,
21 there was another individual involved in the robbery that we
22 didn't know. And at that point that's just what we knew based
23 on tapes and based on interviews. There could have been other
24 people involved in the robbery that we didn't know about.

25 Q. Let's talk about the outstanding issues beyond who the

E9TMCHA1

Reynolds - cross

1 second robber was and who the guy in the car was. What was
2 outstanding --

3 THE COURT: Mr. Dratel, I get your point. We are
4 getting sort of far afield and time is sort, if you don't mind.
5 I understand your point.

6 Q. This is a collaborative process, the 302, to some extent.
7 It goes through layers, right?

8 A. Yes, sir.

9 Q. Who helped you with this 302? Who reviewed it for you?
10 Anybody?

11 A. No.

12 Q. Is that normal?

13 A. Just my supervisor signs it.

14 Q. Did you ever go over it with Detective Deloren?

15 A. No, I did not.

16 Q. Now, you're doing the 302 two days later, right, April 10?

17 A. Yes, sir.

18 Q. And do you have that in front of you? It's 3501-04, I
19 believe.

20 A. Yes, sir.

21 Q. Now, if you look at page 2, in fact, if you look at first
22 paragraph that continues from page 1 and then the second
23 paragraph, which is the first full paragraph on the page, there
24 are four instances where you say unidentified male, correct?

25 A. Yes, sir.

E9TMCHA1

Reynolds - cross

1 Q. And each time you wrote that it never occurred to you to
2 say, oh, wait, he said it was T?

3 A. No, sir.

4 Q. Never occurred to you?

5 A. No, sir.

6 Q. This is two days later, right?

7 A. Yes, sir.

8 Q. When the identity of the second robber was still unknown,
9 right?

10 A. Yes, sir.

11 Q. Someone out on the street who had committed a robbery that
12 you are looking for, right, that NYPD is looking for and that
13 you are looking for, right?

14 A. Yes, sir.

15 Q. And then at the bottom Brown does not know the identity of
16 the other male who participated in the robbery?

17 A. Yes, sir.

18 Q. And at that time it never occurred to you that you had
19 heard that he was T?

20 A. No, sir. Like I said, it was not in my notes and, also --

21 MR. ARAVIND: Objection.

22 MR. DRATEL: Unresponsive.

23 THE COURT: The objection is well taken. I understand
24 your point, which is that it didn't occur to him to say that it
25 was T. I heard that twice. So you can proceed.

E9TMCHA1

Reynolds - cross

1 Q. This is two days later, correct?

2 A. Yes, sir.

3 Q. Did you put out any bulletins or anything to anyone looking
4 for T?

5 A. As I previously stated, we didn't believe Mr. Brown to be
6 truthful, and we had planned to follow up with him at another
7 time.

8 Q. That's not my question. Please answer my questions. It
9 will go a lot faster if you just answer the questions.

10 MR. ARAVIND: Objection.

11 THE COURT: Overruled.

12 A. There wasn't enough information --

13 Q. Did you put out anything asking about T, who T was?

14 A. No, sir.

15 Q. Now, you testified in the grand jury in this case, correct?

16 A. Yes, sir.

17 Q. Three times at least, right?

18 A. Multiple times.

19 Q. First was May 7, 2013. If you don't remember the date, do
20 you have your 3500 entirely or just stuff that's been given to
21 you?

22 A. Just stuff that was provided.

23 Q. 3501-32 --

24 THE COURT: Mr. Dratel, just for the ease of
25 proceeding, if you want to just put the dates in the record and

E9TMCHA1

Reynolds - cross

1 say they are based on the 3500 material, I'm sure the
2 government will tell us if that's not right.

3 MR. DRATEL: Thank you, your Honor. 3501-32, May 7,
4 2013; 3501-34, August 13, 2013; 3501-35, January 23, 2014.

5 THE COURT: You may proceed.

6 MR. DRATEL: If I may approach, your Honor, just so
7 the witness has it in case he needs to refer.

8 Q. This is 3501-32, which is your initial appearance. In
9 fact, that's a grand jury with respect to Mr. Brown, correct?

10 A. Yes, sir.

11 Q. And it's about the drug charges alone, correct? If you
12 recall, you want to look through, go ahead.

13 A. From what I recall, yes.

14 Q. And you used his statement in front of the grand jury. You
15 said, here is what he told me, right?

16 A. Yes, sir.

17 Q. And you took it and you presented it to the grand jury that
18 it was an accurate statement of Mr. Brown's culpability with
19 respect to the drug transactions, correct?

20 A. Accurate in terms of what? I'm sorry.

21 Q. Accurate that he was guilty as a drug dealer, that he
22 admitted to dealing drugs.

23 A. Yes.

24 Q. Now, in August, if you look at 3501-34 -- by the way,
25 nothing about T, right. If you want to look at that first

E9TMCHA1

Reynolds - cross

1 grand jury, you talk about the robbery a little bit, right, but
2 the robbery is not the focus of the charges, right?

3 A. That's correct.

4 Q. But there is nothing about T as the identity of a second
5 robber in that grand jury testimony, correct?

6 A. Correct.

7 Q. And there is nothing in there that says that Mr. Brown was
8 lying to us, we don't believe him, people minimize, nothing in
9 that grand jury. You told the grand jury under oath, right?

10 A. Did I talk to the grand jury under oath?

11 Q. Yes.

12 A. Yes.

13 Q. You didn't say, we don't believe it, he is not telling the
14 truth. You presented his statement as fact, correct?

15 A. His entire statement as fact?

16 Q. You presented his statement as fact.

17 A. I told the grand jury what his statement was.

18 Q. As accurate. You didn't say don't believe it, don't take
19 that as probable cause to indict. You said this is probable
20 cause to indict him. He told me, right?

21 A. I reported to the grand jury what he said.

22 Q. That's not my question. My question is, your purpose in
23 the grand jury was to convince the grand jury that because he
24 had confessed to you he should be indicted and there was
25 probable cause to indict him, correct?

E9TMCHA1

Reynolds - cross

1 MR. ARAVIND: Objection.

2 THE COURT: I'll allow it.

3 A. I'm sorry. Could you repeat the question.

4 MR. DRATEL: If I could be read back.

5 THE COURT: I can read it. My question is: Your
6 purpose in the grand jury was to convince the grand jury that
7 because he had confessed to you he should be indicted and there
8 was probable cause to indict him, correct?

9 THE WITNESS: My grand jury presentation was based not
10 only on the confession, but on drugs that we had recovered from
11 his apartment.

12 Q. That's not my question. Could you please answer the
13 question as opposed to one that you prefer.

14 MR. ARAVIND: Objection.

15 THE COURT: Sustained.

16 Q. Can you please answer my question, if we can have it read
17 back again, because that was not an answer.

18 THE COURT: Why don't you rephrase your question.

19 Q. You're in the grand jury, correct? You're under oath,
20 correct?

21 A. Yes.

22 Q. And the reason you told the grand jury of Mr. Brown's
23 statement was additional evidence, regardless of whatever else
24 you had, was evidence that he was guilty of dealing drugs,
25 right?

E9TMCHA1

Reynolds - cross

1 A. Yes.

2 Q. His statement, right?

3 A. Yes.

4 Q. As true?

5 A. Yes.

6 Q. By the way, August 13, 2013, 3501-34, if you could look at
7 that, please.

8 A. Yes, sir.

9 Q. That included the robbery?

10 A. Yes, sir.

11 Q. And it included Mr. Chambers and Mr. Glisson as defendants,
12 right?

13 A. Yes, sir.

14 Q. And you used Mr. Brown's statement for the purpose, again,
15 of obtaining an indictment, correct?

16 A. It was part of the evidence, yes.

17 Q. That's not what I'm asking. Did you use Mr. Brown's
18 statement to obtain an indictment? It's a simple yes or no
19 answer.

20 A. Yes.

21 Q. And you used it as true, correct?

22 A. I presented it as what Mr. Brown told us.

23 Q. You didn't say to the grand jury, take this with a grain of
24 salt because all these guys lie all the time. Take it with a
25 grain of salt. You didn't say that, did you?

E9TMCHA1

Reynolds - cross

1 A. No, sir.

2 Q. You said, he identified Mr. Glisson, he talked about his
3 phone conversations with Mr. Glisson, he initially lied to us,
4 but then ultimately he told us what happened.

5 That's the way you presented it to the grand jury,
6 correct?

7 A. I'm not sure of the exact way I presented it.

8 Q. Let's go through it.

9 Initially, if you look at page 5 on 3501-34, your
10 testimony from the May 7 grand jury was read into the record,
11 right?

12 A. Yes, sir.

13 Q. If we go to page 10 and 11 --

14 THE COURT: By the way, while we are going to pages 10
15 and 11, I am going to have marked as Court's Exhibit 6, 7, and
16 8 3500-32, 34, and 35 respectively.

17 Q. You talked there about Mr. Brown acknowledging his drug
18 dealing, right?

19 A. I'm sorry. What page?

20 Q. 10 and 11.

21 A. Yes, I'm reporting what Mr. Brown said about his drug
22 trafficking.

23 Q. And if you look at the bottom of page 11, and this is,
24 again, quoting from your prior grand jury testimony, if you
25 look at line 22: Did he make any statements, and he being

E9TMCHA1

Reynolds - cross

1 Mr. Brown, right?

2 A. Yes, sir.

3 Q. Did he make any statements about the robbery that took
4 place on March 25.

5 "A. Yes, he did.

6 "Q. What did he say?

7 "A. He said an individual known to him as Dee, who he later
8 identified as Steven Glisson, approached him the previous day,
9 which would be the 24th. He approached him during the day of
10 the 24th and asked him if he was still talking to Groovy and
11 buying crack."

12 Just for purposes of identification here, since we are
13 not in the middle of trial, but before it, Groovy is David
14 Barea, correct?

15 A. Yes, sir.

16 Q. And Groovy is the person who initially was robbed, right?

17 A. Yes, sir.

18 Q. And if you're still talking to Groovy and buying crack --
19 I'm going back to the testimony -- Tyrone Brown acknowledged
20 that he was and told him he was supposed to get more crack from
21 him that night. Dee told Tyrone Brown he wanted to rob him.
22 Tyrone Brown said he would let him know when Groovy was coming
23 to the apartment.

24 That's the part that's read back, correct?

25 A. Yes, sir.

E9TMCHA1

Reynolds - cross

1 Q. And nothing in there about Mr. Brown's statement about the
2 robbery being untrue, correct?

3 A. I was reporting what Mr. Brown said.

4 Q. I'll repeat it. Nothing there about Mr. Brown's statement
5 not being accurate or true, right?

6 A. No, sir.

7 Q. You were asked, if you look at page 13 and 14, asked about
8 identification of another person, about the robbery suspects,
9 right?

10 A. Yes.

11 Q. And you had already talked about Mr. Glisson being
12 identified by Tyrone Brown, correct?

13 A. Yes, sir.

14 Q. And if you want to look back, you can, but you had already
15 talked about Mr. Glisson being identified by the victims,
16 right?

17 A. Yes, sir.

18 Q. Now, here you talk about Antione Chambers -- this is page
19 14, right?

20 A. Yes, sir.

21 Q. And how is he identified as a participant in the robbery.
22 You say: The female victim and her daughter picked him out of
23 a photo array, right?

24 A. Yes, sir.

25 Q. Nothing about T there, right?

E9TMCHA1

Reynolds - cross

1 A. No, sir.

2 Q. Nothing in this whole grand jury testimony about T, right?

3 A. No, sir.

4 Q. But there is about Twizzie, right? If you look at the
5 bottom of page 15, you talk about Twizzie. You talk about the
6 phone numbers, right?

7 A. Yes, sir.

8 Q. And the phone contacts?

9 A. Yes, sir.

10 Q. But you don't say nothing about Tyrone Brown or T?

11 A. The grand jury does not include all the information I know
12 about the case.

13 Q. How about answering that question again?

14 MR. ARAVIND: Objection, your Honor. We have done
15 this several times again.

16 THE COURT: The objection is sustained. But, Mr.
17 Dratel is right. You should listen carefully to the question
18 and answer the question. Thank you.

19 Q. The question is, you didn't say anything about T, right?
20 You talked about the cell site info, you talked about the
21 photographic ID. You never hooked up the T with Tyrone Brown,
22 right, in your testimony here?

23 A. No, sir.

24 Q. Were you instructed not to by the Assistant U.S. Attorney?

25 A. No, sir.

E9TMCHA1

Reynolds - cross

1 Q. You testified again, right, January of this year, January
2 23, in the grand jury, 3501-35?

3 A. Yes.

4 Q. Nothing there about T either, right?

5 A. Not that I recall.

6 Q. Nothing there about Mr. Brown's statement not being true,
7 correct?

8 A. No, sir.

9 Q. Now, you talked about the cell site order, right? By the
10 way, the proffer with Mr. Brown was June 11, correct, of 2013?

11 A. Yes, sir.

12 Q. If you need to refresh, I can show you.

13 And that was a safety valve proffer, right?

14 A. Yes, sir.

15 Q. That occurred after your first grand jury appearance but
16 before your next two grand jury appearances, right? It was
17 before the August 13 and before the January 23, right?

18 A. Yes, sir.

19 Q. This case has been scheduled for trial several times,
20 right?

21 A. Yes, sir.

22 Q. And you've been involved the whole way through, right?

23 A. Yes, sir.

24 Q. And so you know that Mr. Brown was a defendant until about
25 a month ago, right?

E9TMCHA1

Reynolds - cross

1 A. Yes, sir.

2 Q. And you were prepared to testify about his statement to
3 you, correct, in front of a jury?

4 MR. ARAVIND: Objection.

5 THE COURT: I'll allow it.

6 A. I'm sorry. Could you repeat the question?

7 Q. You were anticipating that you would be testifying at a
8 trial involving Mr. Brown, Mr. Glisson, Mr. Chambers, or some
9 combination of the three, right?

10 A. Yes, sir.

11 Q. And if Mr. Brown went to trial were you going to testify
12 that you took the statement from him, correct? That would be
13 part of your role, right?

14 A. I don't know if we actually prepared my testimony, but
15 sure.

16 Q. You anticipated that?

17 A. Sure.

18 Q. And you were going to tell the jury that he told you all of
19 these things that are in the 302, right?

20 A. Yes, sir.

21 Q. And you weren't going to tell the jury that it wasn't true,
22 right?

23 A. I am not sure if that was going to be asked of me. I was
24 going to tell the jury what Mr. Brown said.

25 Q. You talked about the cell site order. Look, if you could,

E9TMCHA1

Reynolds - cross

1 at 3501-33, please. It's in the book.

2 MR. DRATEL: Your Honor, if we could move that,
3 whatever we are up to.

4 THE COURT: Court's Exhibit 9.

5 Q. That's an e-mail, correct?

6 A. Yes, sir.

7 Q. To Amy Lester, correct?

8 A. Yes, sir.

9 Q. And whose handwriting? Do you know the handwriting?

10 A. No, sir.

11 Q. It's not your handwriting, correct?

12 A. No, sir.

13 Q. There is nothing in here about T, correct?

14 A. No, sir. That was in a later e-mail.

15 Q. And do we have that e-mail?

16 A. I believe the government has it.

17 MR. DRATEL: I don't think I have gotten it. He said
18 subsequent e-mail. He just testified that he sent a subsequent
19 e-mail mentioning T that I don't think has been produced.

20 Q. If you look at the handwritten notes, is that based on a
21 telephone conversation between you and Ms. Lester, if you
22 remember?

23 THE COURT: The question is, if you look at the
24 handwritten notes, is that based on a telephone conversation
25 between you and Ms. Lester, if you remember?

E9TMCHA1

Reynolds - cross

1 THE WITNESS: I don't remember if it was a telephone
2 conversation or not.

3 (Continued on next page)

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E9tgcha2

Reynolds - cross

1 BY MR. DRATEL:

2 Q. And there's nothing in there about T, though, is there?

3 A. No, sir. Like I said, that was in a later email a few days
4 later.

5 Q. And that's 3501-44, I understand. Is that an email? If
6 you'd look at that.

7 A. Yes, sir.

8 THE COURT: Mr. Dratel, can I ask a question just to
9 sort of cut to the chase here. Is there any document in here
10 that is Agent Reynolds' document that references T?

11 MR. DRATEL: I beg your pardon.

12 THE COURT: Is there a document in the 3500 material
13 for Agent Reynolds that references T to your knowledge?

14 MR. DRATEL: Yes. It's 3501-44.

15 THE COURT: Thank you.

16 MR. DRATEL: It's a June 7, 2013 email. We might as
17 well mark that as the next Court exhibit.

18 THE COURT: Okay. It's 44?

19 MR. DRATEL: Yes.

20 THE COURT: All right.

21 (Court Exhibit 10 received in evidence)

22 Q. It says -- it's a June 7th email. It's from you to Amy
23 Lester and it says T as the second guy?

24 THE COURT: We're on Court's Exhibit 10 now, 3501-44.

25 Q. It says T as the second guy.

E9tgcha2

Reynolds - cross

1 A. I'm sorry. Can you point to which page that's on?

2 Q. It's the only page of 44. It's a one page email.

3 THE COURT: No, 44 is long.

4 MR. DRATEL: It's actually the last page of it.

5 They're all numbered together, but it's the last page.

6 THE COURT: It's the very last page of 3501-44: T as
7 the second guy.

8 MR. DRATEL: Yes.

9 THE WITNESS: Okay. I'm sorry. Yes.

10 Q. Is it June 7, 2013, correct?

11 A. Yes, sir.

12 Q. Two months after the interview with Mr. Brown?

13 A. Yes, sir.

14 Q. And a month after you've testified in the grand jury on
15 that, right?

16 A. Yes, sir.

17 Q. And two months essentially after you prepared your 302,
18 right?

19 A. Yes, sir.

20 Q. I mean, you never went back to revise your 302, did you, to
21 supplement it?

22 A. No, sir. In my experience, that's not something that I do.

23 Q. I'm just asking the question: Did you go back and revise
24 your 302?

25 A. No, sir.

E9tgcha2

Reynolds - cross

1 Q. Did you create a supplemental 302 to say, by the way,
2 Mr. Brown also said T as the second robber?

3 A. No, sir.

4 Q. And then Ms. Lester asked you did Brown refer to the second
5 robber as T or did he say Dee, you referred to him as T?

6 Did you answer that question?

7 A. Yes.

8 Q. Did anybody ask you what the basis of T as the second guy
9 was?

10 A. I think it's explained in the email. I'm sorry. If you
11 can repeat the question.

12 Q. Yeah. In other words, did anybody say where did you get
13 this T from?

14 A. Ms. Lester and I discussed it on the phone.

15 MR. DRATEL: But your Honor, I just ask the government
16 since we're in a situation where we don't have rules of
17 evidence, is this copy of the email from Ms. Lester, 3501-33?

18 THE COURT: 3501.

19 MR. DRATEL: Whether this is a copy that the
20 government has from Ms. Lester, not from Agent Reynolds?

21 THE COURT: In other words, whose possession was it
22 in?

23 MR. DRATEL: Yes.

24 MR. ARAVIND: I think those are Ms. Lester's
25 handwritten notes.

E9tgcha2

Reynolds - cross

1 THE COURT: Okay.

2 Q. So T is not reflected there in her handwritten notes,
3 right? So she also decided that that was not important enough
4 to write down what you had told her?

5 A. I'm sorry. You have to ask Ms. Lester.

6 THE COURT: I think this question got lost somewhere,
7 but with respect to 3501-33, they're handwritten notes at the
8 bottom. From looking at those notes, do those seem to be
9 Ms. Lester's notes of a conversation you had with her?

10 THE WITNESS: It appears to be, yes.

11 THE COURT: Okay.

12 Q. Now, the next time this whole thing comes up is
13 September 26 of this year, right, last week?

14 A. I'm sorry?

15 Q. The next time the whole question of T comes up is
16 September 26, last week basically --

17 A. I'm not sure.

18 Q. -- or this year, this month, right?

19 And if you look at 3501-41, please, that's not your
20 notes, correct?

21 A. No, sir.

22 Q. But it's dated I believe --

23 MR. DRATEL: If we can mark this again, your Honor, as
24 whatever the next -- I think we're up to 12, are we?

25 THE COURT: I think it's 11, so 3501 --

E9tgcha2

Reynolds - cross

1 MR. DRATEL: Dash 41.

2 THE COURT: Would be Court's Exhibit 11.

3 (Court Exhibit 11 received in evidence)

4 BY MR. DRATEL:

5 Q. You were interviewed by the prosecutors, right?

6 A. Interviewed?

7 Q. Yeah, you had a conversation with them?

8 A. Sure, I worked with them.

9 Q. And it was about Brown's postarrest statement, right, and
10 the day he was arrested, correct?

11 A. Yes, sir.

12 Q. And you look at in the middle where it says IEG, right?

13 THE COURT: Are we in the middle of the first page?

14 MR. DRATEL: Yes, your Honor. I'm sorry.

15 THE COURT: Okay.

16 Q. Right. And then it says initially said didn't know other
17 guy, but then later said seen one guy, T. Right?

18 A. Yes, sir.

19 Q. "Claim not to him that." Well, there's a word missing
20 obviously as opposed to Glisson, right?

21 A. Yes.

22 Q. And that's you telling them that, right?

23 A. I had a conversation with Ms. Teekei.

24 Q. That's the first time you ever told these two prosecutors
25 anything, right?

E9tgcha2

Reynolds - cross

1 A. I don't recall.

2 Q. Do you have any other piece of paper, any email, anything
3 where you've ever had this conversation with them before?

4 A. Not that I know of.

5 Q. And you knew -- well, withdrawn.

6 You know there was a lot of litigation in the case,
7 motions back and forth, right?

8 A. Yes, sir.

9 Q. And Mr. Brown moved to suppress his statement, right?

10 A. Yes, sir.

11 Q. There was a whole question about whether the statements
12 were coming in against the other defendants and redactions and
13 all of that, right?

14 A. Yes, sir.

15 Q. And there's nothing in writing anywhere during that whole
16 period of time where the government is moving to introduce that
17 statement in one form or another where you submit an affidavit
18 or anything that says -- or even an email to the government
19 during that period of time to these prosecutors that says Brown
20 was lying when he made those statements, right?

21 A. What's the question?

22 Q. There's nothing from you that says those statements are
23 untrue when the government was seeking to admit those
24 statements in all this motion practice that you're aware of you
25 never said hey, don't put that statement in, it's not accurate,

E9tgcha2

Reynolds - cross

1 I don't vouch for that statement?

2 A. I don't vouch for anything. The report is Mr. Brown's
3 statement.

4 Q. Did you ever say it's not accurate, it's not believable, it
5 shouldn't be putting it in as a truthful statement?

6 A. No, sir.

7 Q. Did you ever say that?

8 A. No, sir.

9 Q. Did you ever say -- by the way, going back to the grand
10 jury, did you say to the grand jury, you know, these 302s,
11 they're just based on notes, I don't take everything down and I
12 really leave stuff out all the time, don't take this as the
13 actual things he said; it's just sort of my record.

14 You didn't say that to the grand jury, did you?

15 A. No, sir.

16 Q. No. Because the fact is, the purpose of it is to get as
17 much down as possible to be as comprehensive as possible,
18 right?

19 A. Sure.

20 Q. And how many times has this happened in your career?

21 A. How many times what, sir?

22 Q. When someone identifies a perpetrator and it's not in your
23 302?

24 A. Calling a guy T is not identifying a perpetrator.

25 Q. How many times has someone given you information about a

E9tgcha2

Reynolds - cross

1 perpetrator that could be used at some point down the road to
2 help identify that perpetrator, whether it's a description,
3 whether it's an article of clothing, whether it's anything
4 about them, whether it's an accent, whether it's anything where
5 you left it out of your 302?

6 A. None that I'm aware of.

7 Q. And at the time that you were interviewing Tyrone Brown on
8 April 8, what in this case was more important than trying to
9 figure out who that second robber in the apartment was?

10 A. Figuring out the other robbers was of the utmost
11 importance.

12 MR. DRATEL: Nothing further.

13 THE COURT: Thank you.

14 Any redirect?

15 MR. ARAVIND: Yes. Briefly.

16 REDIRECT EXAMINATION

17 BY MR. ARAVIND:

18 Q. Special Agent Reynolds, you were asked questions about your
19 grand jury testimony. Do you remember those questions?

20 A. Yes, I do.

21 Q. Did you provide your entire investigation and your
22 knowledge about your investigation in your presentation to the
23 grand jury?

24 A. I've never gone into a grand jury and presented my entire
25 case.

E9tgcha2

Reynolds - redirect

1 Q. And, in fact, are you asked questions about, Are you
2 testifying to the sum and substance of statements?

3 A. Yes.

4 Q. And you're only answering the questions that are posed to
5 you?

6 A. That's correct.

7 THE COURT: Sorry. Was 302 an exhibit in front of the
8 grand jury?

9 THE WITNESS: No, it was not.

10 Q. Did you testify to all of the multiple hours of Tyrone
11 Brown's statements in the grand jury or just certain of those
12 statements?

13 A. Just certain statements.

14 Q. Now, going back to the postarrest interview, you mentioned
15 that he spoke for four hours. Is that right?

16 MR. DRATEL: Objection; I think he said three.

17 MR. ARAVIND: Three hours.

18 THE WITNESS: I said over three hours.

19 Q. During those three hours, did you determine that certain
20 statements were reliable and credible?

21 A. Yes.

22 Q. Did you determine that certain statements were not reliable
23 and credible?

24 A. Yes.

25 Q. And how did you make that determination?

E9tgcha2

Reynolds - redirect

1 A. At that time, as I'm taking the 302, like I said, there was
2 obvious lies that he would later admit to. I didn't know
3 anything, I do know something, I don't know who he is, I do
4 know who he is.

5 So, that's just -- those are examples.

6 Q. You were asked questions about the alias T or the
7 identification as T. What was the investigative value for you
8 of knowing that name, T?

9 A. Well, I think like I said previously on direct, that
10 information that Mr. Brown gave us, again, we believed him to
11 be lying at the time based on the fact that he went from not
12 knowing the person at all to just giving us the letter T,
13 that's of little to no investigative value at that time.

14 Q. What would have happened if you had put out a bulletin for
15 a person named T?

16 A. I couldn't even imagine.

17 Q. Try to explain to Judge Schofield what would have happened?

18 A. I think I'd probably get no results.

19 Q. Why is that?

20 A. Because anybody with a perpetrator or suspect that starts
21 with the letter T could theoretically respond to your inquiry.
22 That's just one example.

23 THE COURT: I understand.

24 MR. ARAVIND: Nothing further.

25 THE COURT: Okay.

E9tgcha2

Reynolds - redirect

1 RE CROSS EXAMINATION

2 BY MR. DRATEL:

3 Q. So you said you made some sort of on-the-spot determination
4 as to what you thought was truthful and what you thought was
5 untruthful, right?

6 A. Yes, sir.

7 Q. So you wrote down the part that he said he couldn't
8 identify the second robber, which you put four times
9 unidentified male and then at the bottom you said could not
10 identify the second person; you wrote that down because it was
11 untrue?

12 A. No, sir. I didn't write it down. Like I said, it came at
13 the conclusion of the interview --

14 Q. No, no, no, no, no. We're not talking about T. I said you
15 wrote down that he didn't -- you're saying -- so you wrote down
16 the part that you thought was untrue, which was that he
17 couldn't identify the second robber; that you wrote down.

18 A. I wrote down a lot of the things that he said that I
19 believed turned out not to be true.

20 Q. But the thing that he gave you, in addition when he finally
21 says oh, yeah, I do know the guy as T, that you decided not
22 write?

23 A. Like I said, I did not write it down at that time because
24 we had concluded the interview. I wasn't even taking notes at
25 that point.

E9tgcha2

Reynolds - recross

1 Q. So you couldn't take out your pad and write down something
2 that might identify the second person?

3 A. That's my point: If we had thought it would help us
4 identify the person, I would have gone out of my way, not only
5 to write it down, but attempt to locate pictures to show
6 Mr. Brown. At that time that information, T, was not helpful
7 so as --

8 Q. It was not helpful?

9 THE COURT: I think this is getting a little
10 argumentative.

11 Q. But I need to follow this true it's not helpful you used it
12 for the cell site, right? You didn't think it was helpful?
13 You used it.

14 A. At that point in time when I was interviewing him, I did
15 not believe it to be helpful.

16 Q. But later on you used it?

17 A. Correct, later on after realizing.

18 Q. And by the way, let's say you say if you put out a bulletin
19 for T, you don't know what you would have gotten all these
20 things. How about if you said T operating in the Bronx in a
21 certain neighborhood involved in robberies, do you think you
22 might have been able to narrow it down a little bit?

23 MR. ARAVIND: Objection; relevance.

24 THE COURT: I'll allow it, but I think this is sort of
25 gilding the lily.

E9tgcha2

Reynolds - recross

1 MR. DRATEL: Thank you, your Honor. Nothing further.

2 THE COURT: No further questions.

3 MR. ARAVIND: No further questions.

4 THE COURT: I'm going to reserve on this. I suggest
5 you not open on it because I will decide as I hear more
6 evidence.

7 As I understand, the defense would not put this in in
8 any event until its case; and then if the government felt it
9 needed to put on Agent Reynolds, I assume he's going to be here
10 anyway so he'll be available, is that right?

11 MR. ARAVIND: Agent Reynolds is going to be one of our
12 last witnesses.

13 THE COURT: So he'll be here.

14 MR. ARAVIND: He will certainly be here.

15 THE COURT: Is he planning to sit at counsel table for
16 the trial?

17 MR. ARAVIND: As is customary in this district, he
18 will be sitting here.

19 THE COURT: I'm going to reserve on that. The two
20 things I would like to do before we actually bring the jury in
21 are, one, to rule on the expert testimony issue, and two, to
22 get an allocution regarding the rejection of the guilty plea
23 offer.

24 Agent Reynolds, if you'd like to take your seat again,
25 that would be fine. Let me address the motion concerning

E9tgcha2

Reynolds - recross

1 expert testimony.

2 Mr. Chambers filed his motion to introduce expert
3 testimony on eyewitness identification, which I denied without
4 prejudice on September 22, 2014. Mr. Chambers writes that the
5 proposed expert professor Deryn Strange would provide testimony
6 on the following subjects: One, the impact of the immediate
7 conditions during the witness' initial viewing; two,
8 cross-racial identifications; three, weapon focus or weapon
9 distraction; four, the impact of exposure to serial photo
10 arrays and the reliability of an identification; five, the
11 impact of a single-photo identification procedure during which
12 the name of the photographed individual is revealed and the
13 reliability of an identification; six, possible contamination
14 resulting from a relationship between the witnesses; and seven,
15 the effect of the passage of time between the event and the
16 first identification procedure.

17 Based on the submissions before me, including Dr.
18 Strange's CV, I'm inclined to qualify -- is Dr. Strange is
19 female?

20 MR. DRATEL: Yes.

21 THE COURT: I'm inclined to qualify her as an expert
22 on these matters, but for reasons that I have explained, I'm
23 denying with prejudice Mr. Chambers' request for expert
24 testimony on Subjects 1, 3, 6 and 7. I am also denying the
25 request without prejudice as to the remaining subjects, namely

E9tgcha2

Reynolds - recross

1 Subjects 2, 4 and 5 regarding cross-racial identification,
2 reliability of identification from serial photo arrays, and
3 single-photo identification procedures in this case.

4 Let me explain what that ruling is about.

5 MR. DRATEL: May I ask you to repeat which are in and
6 which are out?

7 THE COURT: Nothing is in at the moment.

8 MR. DRATEL: Right.

9 THE COURT: Everything is denied, but denying without
10 prejudice as to two, four and five, and denying with prejudice
11 one, three, six and seven. And now I will explain.

12 First let me explain why everything is denied at the
13 moment. As I explained before, *Daubert v. Merrell Dow*
14 *Pharmaceuticals Inc.*, 509 U.S. 579, (1993), imposes a
15 "gatekeeping" function on the trial judge to "ensure that any
16 and all scientific testimony... is not only relevant, but
17 reliable." The Supreme Court listed four factors in assessing
18 liability. *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999),
19 requires that where use the same factors in evaluating the
20 reliability of nonscientific testimony. Based on the current
21 submissions from Mr. Chambers, I'm unable to do so. In order
22 to conclude that Dr. Strange's testimony satisfies the
23 *Daubert/Kumho* standard, I would need more information on, one,
24 what theories Dr. Strange's testimony will be based on, in
25 other words, what her opinions are with respect to Items 2, 4

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Reynolds - recross

1 and 5, and that may be just a matter of rewording Mr. Dratel,
2 Items 2, 4 and 5; two, whether those opinions have been
3 published by her or others or have been subject to peer review;
4 three, whether there is an error rate associated with the
5 opinions; and four, whether there is general acceptance within
6 the scientific or relevant academic community of the opinions,
7 and these are just the four factors from *Kumho Tires*. Because
8 I don't have that information at the moment, I am denying the
9 request as to all of the proposed subjects of Dr. Strange's
10 testimony.

11 The request is denied with prejudice as to Subjects 1,
12 3, 6 and 7. Quote "Expert testimony must be helpful to the
13 trier of fact in comprehending and deciding issues beyond the
14 understanding of a layperson." *Marvel Characters Inc. v.*
15 *Kirby*, 726 F.3d 119, 135 (2d Cir. 2013), (quoting *DiBella v.*
16 *Hopkins*, 403 F.3d 102, 121(2d Cir.2005)). "Generally speaking,
17 it is need when the facts and concepts of a case are beyond a
18 layperson's understanding." *S.E.C. v. Ginder*, 752 F.3d 569,
19 575 (2d Cir. 2014). I conclude that basic concepts such as the
20 effect of the passage of time between the event and the first
21 identification procedure and the impact of immediate conditions
22 during the witness' initial interviewing and basically the
23 topics that are outlined in subjects 1, 3, 6 and 7 are basic
24 concepts within a layperson's understanding, which defense
25 counsel may argue to the jury without preference to expert

E9tgcha2

Reynolds - recross

1 testimony. I'm therefore denying the request for expert
2 testimony regarding the subjects numbered 1, 3, 6 and 7 in
3 Mr. Chambers' letter with prejudice.

4 Given the facts of the identification procedure in
5 this case, I conclude that appropriate expert testimony
6 regarding the reliability of cross-racial identification and
7 the impact of multiple photo arrays and single-photo
8 identification of eyewitness reliability would be helpful to if
9 jury. I'm also mindful that the Second Circuit has cautioned
10 that expert testimony about the reliability of eyewitness
11 identification can, quote, "intrude[] too much on the
12 traditional province of the jury to assess witness
13 credibility." *United States v. Lumpkin*, 192 F.3d 280, 289 (2d
14 Cir. 1999). Therefore, I will not allow any expert testimony
15 that directly opines on the particular facts, photos and
16 identification in this case, including the ultimate credibility
17 or reliability of the actual identifications made or to be made
18 of Mr. Chambers. Rather, upon savings of the *Daubert* factors,
19 I am inclined to permit an expert to provide general opinions
20 that relate to Subjects 2, 4 and 5 so that defense counsel, and
21 perhaps the government through cross-examination, will have a
22 factual predicate to argue to the jury.

23 Mr. Chambers may renew his motion as to those subjects
24 with information that satisfies the *Daubert* factors as soon as
25 possible, but in any event no later than the close of the

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Reynolds - recross

1 government's case, or if he prefers, we can hold a *Daubert*
2 hearing to ensure that the expert testimony satisfies the
3 requisite factors.

4 I also want to note that the government has pointed to
5 a First Circuit case, *United States v. Jones*, 689 F.3d 12 (1st
6 Cir.2012), in which the court upheld a district court's
7 decision to exclude expert testimony and eyewitness
8 identification in favor of jury instructions that covered
9 similar ground.

10 I received the proposed jury instructions submitted by
11 you, the parties, and the jury instructions from the *Jones*
12 case. The proposed jury instructions here are not sufficiently
13 detailed to displace the need for an expert like the
14 instructions in *Jones*.

15 In *Jones*, the jury instructions made specific
16 reference to scientific studies and conclusions regarding
17 eyewitness identification, reliability and single-photo
18 identification. In contrast, the proposed jury instructions
19 you have submitted are worded very generally and make no
20 reference to scientific studies.

21 If the government or the defense would like to propose
22 more expansive jury instructions or joint instructions or a
23 stipulation between the parties to be used in place of expert
24 testimony more along the lines of the instructions used in
25 *Jones*, I would be happy to consider that, along with any

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Reynolds - recross

1 briefing as to why such instructions are or are not appropriate
2 to replace expert testimony.

3 Given the proposed jury instructions you've submitted,
4 however, I'm inclined to allow Mr. Chambers' expert to testify
5 in general terms about scientific and/or academic conclusions
6 as to subjects two, four and five once I'm satisfied the expert
7 testimony meets *Daubert/Kumho* requirements.

8 So my ruling for the moment is to deny the defense
9 motion to introduce expert testimony about eyewitness
10 identification on *Daubert* grounds and it is denied in part with
11 prejudice and in part without prejudice to renewal as I have
12 just explained.

13 I know this is a little bit intricate so if there are
14 any questions about my ruling, not the basis for my ruling, but
15 what my ruling is, I'm happy to tell you or clarify. And also,
16 if I can just ask my law clerk to give a copy of what I just
17 read to the court reporter. Thank you.

18 Any questions? All clear?

19 MR. DRATEL: With respect to identification, based on
20 our review of the 3500 material, I would like to renew the
21 motion for a Wade hearing for a testimony outside the hearing
22 of the jury a hearing on the viability of the identification of
23 the photographic investigation based on the following factors
24 in addition to what we were able to present to the Court back
25 when we litigated this twice in terms s of initial motions and

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Reynolds - recross

1 then a reconsideration motion, but other factors that I think
2 go to the viability of the ID that would -- necessitate a
3 hearing rather than just having a jury hear it outright. There
4 first should be a hearing.

5 THE COURT: That's what I need to have explained: Why
6 do we need to have a hearing outside the presence of a jury, as
7 opposed to just having the jury hearing the evidence, hear the
8 expert on the subjects that I said and then have both sides
9 make their arguments?

10 MR. DRATEL: I think under way part of the Court's
11 gait keeping function as a threshold matter whether the ID goes
12 to the jury in the first place.

13 THE COURT: Speak into the mic. Usually I can
14 substitute the words I can't hear, but I will confess to you
15 I'm not familiar with Wade hearings. You need to explain.

16 MR. DRATEL: Sure. On the hearing on identification
17 on the viability of an identification whether it's
18 impermissibly suggestive as a matter of law so it doesn't even
19 get to the jury so that a witness would not be permitted to
20 testify about it.

21 THE COURT: I thought we have done that twice already.

22 MR. DRATEL: That's correct, but that was based on
23 what turns out to be an incomplete report record as to just how
24 suggestive and how tainted the identification was and based on
25 the 3500.

E9tgcha2

Reynolds - recross

1 THE COURT: Why not let the jury figure that out?
2 What does Wade say that takes it away from the jury?

3 MR. DRATEL: If it's so impermissibly suggestive that
4 it doesn't pass muster to get to the standard of going to the
5 jury this Court should exclude it outright.

6 THE COURT: Is Wade a Supreme Court case or Second
7 Circuit?

8 MR. DRATEL: No. It's a Supreme Court case.

9 THE COURT: What's government's position on that?

10 MR. DRATEL: May I just read into the record this.

11 THE COURT: Absolutely.

12 MR. DRATEL: One is, that when one of the people who
13 made the ID -- there are two IDs. We'll call this -- actually,
14 we know the names, Ms. Torres, T-O-R-R-E-S.

15 THE COURT: Okay.

16 MR. DRATEL: When she was shown a photograph of a
17 newspaper article as part of a newspaper article, a photograph
18 of Mr. Chambers, she also saw his name in the caption.

19 THE COURT: Right.

20 MR. DRATEL: She also saw more than one photograph
21 from that newspaper article, there's a series of thumbnail
22 photographs on the URL from that article, so she clearly based
23 on her 3500 material saw more than one.

24 THE COURT: Did she see the hard copy or did she see
25 it on the screen?

E9tgcha2

Reynolds - recross

1 MR. DRATEL: I don't know, your Honor, but she went
2 home and Googled him.

3 THE COURT: Okay.

4 MR. DRATEL: So, and then --

5 THE COURT: What 3500 material are you referring to?

6 MR. DRATEL: 3507 and --

7 THE COURT: And whose 3507?

8 MR. DRATEL: This is Ms. Torres.

9 THE COURT: Okay.

10 MR. DRATEL: 3507 and -- I'll be able to give you
11 specifics in one second.

12 THE COURT: You're saying she was shown a photo and
13 then she went home and Googled him and saw a number of
14 photographs?

15 MR. DRATEL: It's unclear as to what exactly she saw.
16 She said she went home and Googled him.

17 THE COURT: Okay. Is that the additional fact that
18 you're bringing to my attention or is there more?

19 MR. DRATEL: Also, that initially she
20 identified -- that she identified someone else in a photograph
21 as someone she saw someone else she knew in the photos and I'm
22 not sure what the impact is on her ultimate identification, but
23 it's something we didn't know about before certainly.

24 THE COURT: You're saying in the second photo array
25 she said she knew one of the other people.

E9tgcha2

Reynolds - recross

1 MR. DRATEL: Not in the array, in a series of arrays,
2 she saw a series of arrays.

3 THE COURT: I see.

4 MR. DRATEL: 3507, 3507-01 which is basically the
5 bottom of the page one through page two.

6 THE COURT: Wait. 3507-01.

7 MR. DRATEL: Yes.

8 THE COURT: Bottom of page two.

9 MR. DRATEL: Bottom of page one, beginning of page
10 two. That's just -- I'm telling you where it is in 3500 that
11 she refers to some of these things. Also 3507-02 on page two
12 and then also 3507-3 at the bottom of page one. So that's
13 where these additional facts about Ms. Torres' ID.

14 THE COURT: Where does it say she Googled it?

15 MR. DRATEL: That's 3507-03, at the bottom of the
16 page, it's handwritten notes. It's remember saw photos at
17 precinct twice and once at white castle remember photo in
18 article saw name.

19 THE COURT: Remember photo in article saw name,
20 Googled name afterward and saw same photo in article, nothing
21 different than when saw it in VD office.

22 Based on what you told me, I don't think there's any
23 basis to revisit this again. It seems to me that there are
24 certainly arguments you could make that the procedure was
25 suggestive. I think the Second Circuit has established quite a

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Reynolds - recross

1 high standard from keeping it from the jury. I think the jury
2 will be fully capable of evaluating the evidence, particularly
3 if both sides are permitted to make their both factual and
4 scientific arguments about why the identification is or is not
5 reliable.

6 MR. DRATEL: Thank you, your Honor.

7 THE COURT: Now, the last thing I would like to do
8 before we pick a jury, each though it feels like we've been on
9 trial for a while now, is an allocution.

10 I'd like to inquire about the government's offer of a
11 plea and communication of that offer to Mr. Chambers and I want
12 Mr. Chambers to listen very carefully to my questions and the
13 answers given by counsel because I'll have a question for you
14 when we're finished.

15 So if I could ask the government, did you extend a
16 plea offer to Mr. Chambers?

17 MS. TEEKEI: Yes, we did.

18 THE COURT: Was it in writing?

19 MS. TEEKEI: Yes, it was.

20 THE COURT: Is there a copy of the writing here in
21 court.

22 MS. TEEKEI: Your Honor, however, we can bring it. If
23 we have a break, we'll bring it to your Honor.

24 THE COURT: Okay. What were the terms of the offer?

25 MS. TEEKEI: We offered Mr. Chambers a plea to Count

E9tgcha2

Reynolds - recross

1 One of the indictment, the Hobbs Act robbery conspiracy. Given
2 his prior criminal history, the various enhancements all
3 ultimately were not quite sure of the right word -- were taken
4 over by the career offender guidelines, so his career offender
5 guidelines are what drove the plea offer with acceptance of
6 responsibility, it was 151 to 188 months of imprisonment as the
7 guidelines range.

8 THE COURT: Okay.

9 MS. TEEKEI: With no mandatory minimum, which is what
10 would have happened with the 924(c) counts.

11 THE COURT: In the government's view, what is the
12 defendant's sentencing exposure if he proceeds to trial and is
13 convicted on every count here?

14 MS. TEEKEI: Your Honor, I don't have that calculation
15 right in front of me. It's approximately 230 months to -- in
16 addition to the 84 months of the mandatory minimum, which would
17 be the 924C count.

18 THE COURT: So 230 plus 84 would be --

19 MS. TEEKEI: And that's the bottom end of that
20 guidelines range, your Honor.

21 THE COURT: Okay. And 314 months is at the bottom end
22 of the range.

23 MR. ARAVIND: Something to that effect.

24 THE COURT: Approximately. But in any event, it's
25 very substantially more than the 151 to 188 that was offered,

E9tgcha2

Reynolds - recross

1 is that right?

2 MS. TEEKEI: Yes, your Honor.

3 THE COURT: Mr. Dratel, did you give Mr. Chambers a
4 copy of the written plea offer and discuss it with him?

5 MR. DRATEL: Yes, I did, your Honor.

6 THE COURT: Did you discuss with him the sentencing
7 exposure under the plea offer versus if he went to trial?

8 MR. DRATEL: Yes.

9 THE COURT: Without telling me your recommendation,
10 did you make a recommendation to him about whether or not to
11 accept or reject the offer?

12 MR. DRATEL: I can't say that I made a recommendation
13 specifically one way or the other. We discussed --

14 THE COURT: I don't really want to hear about the
15 communication; I just want to know that you thoroughly
16 discussed his options.

17 MR. DRATEL: I did, your Honor.

18 THE COURT: Mr. Chambers, I'd like to ask you a couple
19 of questions. First, have you taken any drugs, medicine or
20 pills in the last 24 hours?

21 THE DEFENDANT: No.

22 THE COURT: Is your head clear today?

23 THE DEFENDANT: Yes.

24 THE COURT: I assume you've heard the questions I just
25 asked the government and I just asked your lawyer.

E9tgcha2

Reynolds - recross

1 Is it correct that you had a thorough discussion with
2 your lawyer about your options and your rejection of the plea
3 offer by the government?

4 THE DEFENDANT: Yes.

5 THE COURT: Is it correct that you have rejected the
6 government's plea offer?

7 THE DEFENDANT: Yes.

8 THE COURT: Thank you very much.

9 Why don't we take a brief break and Mr. Street, with
10 any luck, we'll find jurors outside the door and what we're
11 going to do -- well, I'll let him orchestrate the logistics
12 here. So we're adjourned briefly for ten minutes.

13 Thank you.

14 MR. DRATEL: Your Honor, can we have a copy of the
15 Court's preliminary instructions based on some of the changes
16 that we made back last week, last Monday?

17 THE COURT: I was not planning to distribute another
18 copy to counsel, but I did make the changes.

19 MR. DRATEL: Thank you.

20 THE COURT: Okay.

21 (Recess)

22 (In open court)

23 THE COURT: Mr. Dratel, as you know, the defendant has
24 the right to be present at side bars. What do you intend to do
25 about that? What we'll do is probably huddle over there with

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Reynolds - recross

1 the white noise machine and have the court reporter drag her
2 machine over there.

3 MR. DRATEL: Let me talk to Mr. Chambers about that.

4 THE COURT: Okay. Fine.

5 Let me ask the government: Are there any witnesses
6 for whom we need to make special arrangements excusing the jury
7 while they come on or go off, anything like that?

8 MS. TEEKEI: Yes.

9 THE COURT: Will you give me notice and plenty of
10 time, like, the day before?

11 MS. TEEKEI: We will. In fact, one of the things I
12 meant to do during this break is run to my office and print out
13 a copy of an order from the Department of Justice. I did not
14 have a chance to do that, but will do so at the next break and
15 present that to you.

16 THE COURT: Okay. Thank you.

17 MS. TEEKEI: Your Honor, one additional issue.

18 THE COURT: Speak into the mic.

19 MS. TEEKEI: Yes. Of course.

20 There are other what I think are potential witnesses
21 sitting in the courtroom.

22 THE COURT: We need to not have any witnesses in the
23 courtroom.

24 Do you know who they are?

25 MS. TEEKEI: I'm aware of one. I'm aware of

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Reynolds - recross

1 Ms. Dunbar. I don't know the names of the two other
2 individuals who are there, but I'm happy to, once I know their
3 names.

4 THE COURT: Mr. Street, if you would work with
5 Ms. Teekei to figure out who the potential witnesses are and
6 excuse them.

7 My rule is that until a witness testifies, you can't
8 be present in the courtroom, but after that, you can be present
9 in the courtroom.

10 MR. ARAVIND: For the record, to be clear, we don't
11 know the identity of certain people in the back. I know we
12 issued a number of subpoenas in large part due to the Court's
13 ruling that we could not elicit testimony from the probation
14 officer. There were a number of members of Mr. Chambers'
15 family that we did intend to call. We have not met with these
16 witnesses yet. They received a subpoena to arrive today.

17 THE COURT: I understand.

18 MR. ARAVIND: We want to meet with them first and
19 determine whether they are going to be witnesses.

20 THE COURT: That's between you and them, but in the
21 meantime, we can exclude them from the courtroom.

22 Also, if I can ask counsel to keep an eye on the
23 courtroom. It looks like more people who came in who may be
24 witnesses, let us know and we'll try to deal with that.

25 MR. ARAVIND: To let Mr. Dratel and the Court know,

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Reynolds - recross

1 Special Agent Reynolds will try to speak to those individuals
2 at the lunch break.

3 THE COURT: Okay.

4 MR. DRATEL: I know one person who has been
5 subpoenaed, Mr. Chambers' sister. She has representation
6 because I heard from that lawyer this morning, Ms. Tipograph.
7 So I know she's on duty today, but obviously I think if there's
8 any a tempt to interview her --

9 THE COURT: So now the government is on notice that
10 she is represented.

11 MR. ARAVIND: We received an email from Ms. Tipograph
12 as well.

13 THE COURT: Thank you.

14 I wanted to mention to counsel that we will not be
15 sitting Thursday morning. So we'll start at 1:00 that day and
16 go until 5:00 to let you know so you don't hear it for the
17 first time when I tell the jury.

18 MR. DRATEL: Thank you, your Honor.

19 THE COURT: What witness names did you want me to use
20 for people to ask them if they know any witnesses?

21 MR. ARAVIND: We provided a list.

22 THE COURT: When was that?

23 MR. ARAVIND: We gave it to Mr. Street earlier this
24 morning. He should have it.

25 MR. DRATEL: Our only witness would be Dr. Strange.

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Reynolds - recross

1 THE COURT: I'm not going to announce her until you
2 meet your *Daubert* requirements.

3 Thank you.

4 (Recess)

5 (Continued on next page)

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E9tgcha3

Trial

1 (In open court; jury present)

2 (Jurors sworn)

3 (Alternate jurors sworn)

4 THE DEPUTY CLERK: Please be seated. The jurors are
5 sworn.

6 THE COURT: Thank you. So at this time, I will excuse
7 the remaining people in the courtroom, but I just wanted to
8 repeat my thanks. You have been willing and patient and
9 participated in the process. You have done your civic duty.
10 That's what makes our system work.

11 I want to thank you for participating for being here.
12 I'm sorry you won't be able to participate in the trial. As I
13 said, I think it will be an interesting one, but perhaps you'll
14 be chosen for another one. Thank you very much.

15 Mr. Street will give you your cards and tell you where
16 to report.

17 THE DEPUTY CLERK: So everyone you can all stand. I'm
18 going to give one of you the cards. You're going to take it
19 back to the jury room. The original place you first came to
20 and you're going to take the cards with you.

21 THE COURT: Thank you all for your time. Have a great
22 day.

23 (Prospective jurors excused)

24 THE COURT: Ladies and gentlemen, from this point on
25 until you retire to deliberate on your verdict, it's your duty

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Trial

1 not to discuss this case and not to remain in the presence of
2 other persons who may be discussing this case.

3 The rule about not discussing the case with others
4 includes discussions even with your family and friends. So
5 please do not talk to your family and friends about the case
6 until after you have finished your duty as a juror and finished
7 your deliberations and returned your verdict.

8 If at any time during the course of the trial anyone
9 attempts to talk to you or communicate with you in any way
10 about the case, either in or out of the courthouse, you should
11 immediately report that attempt to me and you should not speak
12 with them.

13 In this regard, let me explain again that the
14 attorneys and the defendant in the case are not supposed to
15 talk to the jurors, even to offer a friendly greeting. So if
16 you happen to see them outside the courtroom, they will and
17 they should ignore you. Please don't take offense. They'll
18 only be acting properly.

19 If anything should happen involving any of you that is
20 of an unusual nature or which you think is something that the
21 Court should be told about, do not discuss it with any other
22 juror, simply give my deputy, Mr. Street a note to the effect
23 that you want to speak with me about it and I can hear what it
24 is and I can hear what you have to say. Of course, I don't
25 expect anything unusual or improper to happen. I just give

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1 this instruction as a precaution.

2 Now that you have been sworn, I'll tell you about your
3 duties as jurors and give you instructions to help you
4 understand what will be presented during the trial.

5 At the end of the trial, I'll give you instructions
6 again and those instructions will control your deliberations.

7 At the end of the presentation of the evidence and
8 after my final charge to you, it will be your duty to decide
9 from the evidence what the facts are. You and you alone are
10 the judges of the facts. You will hear the evidence, decide
11 what the facts are and then apply the facts to the law which I
12 will give you. That is how you will reach your verdict.

13 My duty is to instruct you on the law. It is your
14 duty to accept the instructions of law and apply them to the
15 facts as you determine them. On the legal issues, you must
16 take the law as I give it to you whether you agree or not and
17 if any attorney states a legal principle different from what I
18 state in my instructions, it's my instructions you must follow.

19 You must not take anything I say or do during the
20 trial as indicating a view on any issue, including what your
21 verdict should be. I will not express or apply any opinions
22 about which witnesses you should believe, what facts are
23 established or what inferences should be drawn from the
24 evidence. You are the sole judges of all of the questions of
25 fact submitted to you.

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Trial

1 As the sole judges of the facts, you must determine
2 which of the witnesses you will believe, what portion of their
3 testimony you accept and what weight you attach to it.

4 The burden is on the prosecution to prove guilt beyond
5 a reasonable doubt. As I'll instruct you in more detail after
6 the lawyers have presented their cases, reasonable doubt is
7 based on reason and common sense. It is a doubt that a
8 reasonable person has after carefully weighing all of the
9 evidence or a doubt that would make a reasonable person
10 hesitate to act in a manner of importance in his or her own
11 life.

12 The burden to prove guilt beyond a reasonable doubt
13 never shifts to the defendant because the law never imposes on
14 a defendant in a criminal case the burden or duty of calling
15 any witnesses or producing any evidence. The law presumes the
16 defendant to be innocent of all of the charges against him.

17 If after careful consideration of all of the evidence
18 at the end of trial, and following the rules of law that I'll
19 explain, you have a reasonable doubt about the defendant's
20 guilt, you must acquit him; that is, you must find him not
21 guilty.

22 If however after careful consideration of all the
23 evidence presented and following the rules of law that I will
24 explain you have no reasonable doubt about the defendant's
25 guilt, you must convict him; that is, find him guilty.

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1 You'll decide what the facts are from the evidence
2 that will be presented in court. That evidence will consist of
3 testimony of witnesses, documents and other things received
4 into evidence. And any facts that the lawyers I to or admit or
5 that I may instruct you to find.

6 There are two kinds of evidence: Direct and
7 circumstantial. Direct evidence is testimony by a witness
8 about what that witness personally saw or heard or did.
9 Circumstantial evidence is indirect evidence. It is proof of
10 one or more facts from which you can find another fact.
11 There's a simple example of circumstantial evidence that's
12 often used in the courthouse. Assume when you came in this
13 morning the sun was shining and it was a nice day. Assume that
14 the curtains were closed and you couldn't see outside and as
15 you're sitting here someone walked in with an umbrella that was
16 dripping wet and then a few minutes later someone else walked
17 in with a wet umbrella. Now you can't look outside the
18 courtroom and you can't see whether or not it's raining so
19 there's no direct evidence of the fact, but on the combination
20 of facts I have asked you to assume, it would be reasonable and
21 logical for you to conclude that it had been raining. That's
22 all there is to circumstantial evidence. You infer on the
23 basis of your reason and experience and common sense from one
24 established fact the existence or nonexistence of some other
25 fact.

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1 You may consider both direct and circumstantial
2 evidence in deciding this case. The law permits you to give
3 equal weight to both or none. It's up to you to decide how
4 much weight, if any, to give any evidence. There's no magic
5 formula by which you should evaluate testimony or exhibits. I
6 will however give you some guidelines for determining the
7 credibility of witnesses at the end of the case.

8 Right now, I'll just say that you bring with you to
9 the courtroom all the experience and background of your lives.
10 You don't have to leave your common sense outside the
11 courtroom.

12 During the trial, I may sustain objections to
13 questions that are asked. When that happens, I will not permit
14 the witness to answer or, if the witness has already answered,
15 I will instruct that the answer be stricken from the record and
16 that you disregard it and dismiss it from your minds.

17 In reaching your decision, you may not draw any
18 inference from an unanswered question nor may you consider
19 testimony that I have ordered stricken from the record.

20 You should not show any bias against an attorney or an
21 attorney's client because the attorney objected to the
22 admissibility of evidence or asked for a conference outside the
23 hearing of the jury or asked the Court for a ruling of law. It
24 is the lawyers' duty to do all of these things.

25 You should also understand what is not evidence. What

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1 the attorneys say in their opening statements, which you'll
2 hear in a minute, closing argument, objections or questions is
3 not evidence, neither is the testimony that I instruct you to
4 disregard. Moreover, anything that I say is not evidence. The
5 only oral testimony that is evidence comes from witnesses.
6 What the lawyers say in their arguments is not evidence.
7 Their arguments are commentary to help you understand the
8 evidence.

9 For example, in just a minute, the lawyers may make
10 opening statements and tell you what they expect the evidence
11 to show, but what they say to you is not evidence and it's only
12 what's actually introduced into evidence through the mouths of
13 the witnesses or through exhibits or any stipulations that you
14 may consider in reaching your verdict.

15 If in the course of your deliberations your
16 recollection of the facts differs from what the lawyers say in
17 their arguments, it is your recollection that controls.
18 Further, anything you may see or hear while the Court is not in
19 session, even if it's done or said by one of the parties or one
20 of the witnesses is not evidence. Only what is admitted into
21 evidence here when the Court is in session and all the parties
22 and all the jurors are present may be considered by you as
23 evidence.

24 This is a criminal case. It's brought in the name of
25 the United States against Antione Chambers. The fact that the

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1 prosecution is brought in the name of the United States does
2 not entitle the government to any greater consideration than
3 that accorded to Mr. Chambers. All parties stand as equals
4 here in court. The government alleges that Mr. Chambers and
5 others who are not a part of this trial agreed to commit and
6 then did commit a robbery of a victim on or about March 25,
7 2013. The victim was believed to be in possession of narcotics
8 proceeds, meaning money from drugs. The government also
9 alleges that Mr. Chambers and others kidnapped two victims and
10 that Mr. Chambers used a firearm to carry out the agreement to
11 commit a robbery and to carry out the kidnapping. Each crime
12 is charged separately and there are four charges.

13 Mr. Chambers has pleaded not guilty to all four of the
14 charges, and you should remember that he is presumed innocent
15 unless proven guilty.

16 I'm now going to tell you about some of the law that
17 you'll have to apply to the facts as you find them. These are
18 only preliminary and summary instructions. They're to help you
19 evaluate the evidence in light of what you'll be asked to do
20 after you've heard all of the evidence. The final instructions
21 that I give you at the end of the trial will contain more
22 detail about the law.

23 To the extent there are any differences between what I
24 tell you now and the final instructions, the final instructions
25 will be controlling, meaning the final instructions are the

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1 ones you must follow when you deliberate.

2 Now, I'll briefly summarize what the government must
3 prove beyond a reasonable doubt for each of the four crimes
4 charged against Mr. Chambers. You will be asked to return a
5 separate verdict on each of the four alleged crimes. So the
6 first one is conspiracy to commit armed robbery. To prove this
7 charge, the prosecution must prove the following two elements
8 beyond a reasonable doubt. First, that a robbery conspiracy
9 existed; in other words, the prosecution must prove that two or
10 more people agreed, either in a spoken or unspoken way to join
11 together to commit a robbery. Second, the prosecution must
12 prove that Mr. Chambers knowingly and unlawfully, meaning with
13 a purpose to violate the law, became a member of the
14 conspiracy.

15 The prosecution must prove beyond a reasonable doubt
16 that Mr. Chambers, with an understanding of the unlawful
17 character of the conspiracy knowingly engaged, advised or
18 assisted in the conspiracy for the purpose of committing a
19 robbery. That's the first charge.

20 The second charge is robbery, and it is that
21 Mr. Chambers and others committed a robbery. To prove the
22 charge, the prosecution must prove the following four elements
23 beyond a reasonable doubt: First, the government must prove
24 that Mr. Chambers knowingly took the personal property of
25 another or from the presence of another. Here the property

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1 Mr. Chambers is accused of taking is the victim's money from
2 the sale of narcotics.

3 Second, the government must prove that Mr. Chambers
4 took the property against the victim's will by force, violence
5 or fear or threatened force, violence or fear.

6 Third, the government must prove that the taking of
7 property had an effect or potential effect on interstate
8 commerce, meaning commerce between two or more states of the
9 United States or commerce between a state of the United States
10 and a foreign country.

11 Fourth, the government must prove that Mr. Chambers
12 acted knowingly and unlawfully.

13 Finally, Mr. Chambers is also charged with aiding and
14 abetting a robbery. Aiding and abetting is a theory of
15 criminal law that permits a defendant to be convicted of a
16 crime if he helped someone else commit the crime, even though
17 he did not himself commit the crime.

18 Here, even if you find that Mr. Chambers did not
19 commit the robbery, you must consider whether he willfully and
20 knowingly associated himself with the crime and willfully and
21 knowingly took some action to help the crime be committed.

22 The third charge is kidnapping. To prove this charge,
23 the prosecution must prove the following four elements beyond a
24 reasonable doubt: First, the government must prove that
25 Mr. Chambers kidnapped or carried away the victim.

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1 Second, the government must prove that Mr. Chambers
2 held the victim for ransom, reward or another reason.

3 Third, the government must prove that the victim was
4 transported in interstate or foreign commerce or the defendant
5 traveled in interstate or foreign commerce or used means,
6 facility or instrumentality of interstate or foreign commerce
7 in committing the crime or in furtherance of committing the
8 crime. An example of means, facility or instrumentality of
9 interstate or foreign commerce is the telephone.

10 Fourth, the government must prove that the defendant
11 acted unlawfully and knowingly.

12 Mr. Chambers is also charged with aiding and abetting
13 kidnapping. Even if you find that Mr. Chambers did not commit
14 the kidnapping, you must consider whether he willfully and
15 knowingly associated himself with the kidnapping and knowingly
16 and unlawfully took some action to help the kidnapping be
17 committed.

18 The fourth charge and the final charge is possession
19 of a firearm during and in relation to a crime of violence. To
20 prove this charge, the prosecution must prove the following
21 three elements beyond a reasonable doubt. First, that on
22 March 25, 2013, Mr. Chambers used or carried or possessed a
23 firearm or aided and abetted someone else in the use, carrying
24 or possession of a firearm, and a gun is a type of firearm.

25 Second, the government must prove that Mr. Chambers

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1 used or carried the firearm or aided and abetted the use and
2 carrying of the firearm during and in relation to a crime of
3 violence. Here, the crimes of violence alleged are the
4 conspiracy to commit robbery charged in Count One and the
5 kidnapping charge in Count Three.

6 Third, you must find that Mr. Chambers knowingly used,
7 carried or possessed a firearm or that he knowingly aided and
8 abetted another in using, carrying or possessing a firearm.

9 Finally, in addition to the charges I have just
10 described, you must consider whether for each of the crimes
11 charged, the government has proved by a preponderance of the
12 evidence that the crime or an act in furtherance of the crime
13 took place here in this judicial district called the Southern
14 District of New York, and the Southern District includes
15 Manhattan, the Bronx and Westchester.

16 So let me tell you a little bit about your own conduct
17 during the trial. Each of you will be provided with a binder
18 containing most of the documents that may be referenced during
19 the trial. Please don't look at the binders unless and until
20 you are asked to do so.

21 At the front of each binder will be several blank
22 pages on which you may take notes. You do not have to take
23 notes, but you may take notes if you want. Please be sure,
24 though, that any note-taking does not interfere with your
25 listening or considering all of the evidence.

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1 Also, if you do take notes, you must not show them to
2 or discuss them with any other juror or anyone else at any time
3 either before or even during your deliberations. Any notes you
4 take are to be used only to assist you and your notes are not a
5 substitute of your recollection of the evidence. The fact that
6 a particular juror takes notes entitles that juror's views to
7 no greater weight than those of any other juror.

8 If during your deliberations you have any doubt as to
9 any of the testimony, you'll be permitted to request that the
10 official transcript, which is being taken down by the court
11 reporter, be read to you.

12 Mr. Street my deputy clerk will collect your binders
13 at the end of each day and secure them. They'll have a number
14 on each one so you'll know it's yours and you'll always get
15 your same binder back. No one will be permitted to review your
16 notes and after the trial is finished, the binders and your
17 notes will be collected and destroyed.

18 So I should caution you about certain general
19 principles about your conduct as jurors and I already gave some
20 instructions like this before our break, but let me elaborate a
21 little bit now. First, do not talk to each other about this
22 case or about anyone who has anything to do with it until the
23 end of the case when you go to the jury room to decide on your
24 verdict.

25 Second, do not talk with anyone else about the case or

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1 about anyone who has anything to do with it until the trial has
2 ended and you have been discharged as jurors; that means
3 members of your family, your friends. Certainly, you may tell
4 them you're a juror in the case, but don't tell them anything
5 else about it until the end after you have been discharged by
6 me.

7 Third, do not let anyone talk to you about the case or
8 about anyone who has anything to do with it. If someone should
9 try to do that, please report it to me immediately through
10 Mr. Street, my deputy clerk. You should not however discuss
11 with your fellow jurors either that fact or any other fact that
12 you feel is necessary to bring to the attention of the Court.

13 Fourth, do not converse, whether in or out of the
14 courtroom, with any of the parties or the attorneys or any
15 witnesses. By this I mean not only don't talk about the case,
16 but don't talk at all, even to ask the time of day.

17 In no other way can all parties be assured of the
18 absolute impartiality they're entitled to expect of you as
19 jurors. I have instructed the lawyers and parties not to speak
20 to you or even acknowledge you with a hello or good morning
21 outside the courtroom. So don't hold it against them if they
22 ignore you or leave an area that you're in; they're only
23 following my instructions. Someone watching from a distance
24 might not hear what is said between an attorney and a juror,
25 and even a pleasantry can create a misimpression.

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1 Fifth, don't read any news stories or articles or
2 listen to any radio or television reports about the case or
3 anyone else who has anything to do with it.

4 Sixth, do not research or do any investigation about
5 the case on your own. As jurors, you must decide the case
6 based solely on the evidence presented here within the four
7 walls of the courtroom. That means during the trial, you must
8 not conduct any independent research about the case, the
9 matters in the case, the parties involved, the attorneys
10 involved. In other words, you should not consult dictionaries
11 or reference materials, you should not consult the Internet,
12 websites, blogs or any other electronic or other tools to
13 obtain information about the case or to help you decide it. Do
14 not visit any place you may hear described during the trial.
15 Please do not try to find out information from any source
16 outside the confines of the courtroom.

17 Seventh, don't communicate about the case or research
18 the case using cell phones, iPhones, Blackberrys, text
19 messages, email the Internet websites, blogs, Twitter,
20 Facebook, LinkedIn, YouTube, any other social media or
21 networking sites or any other tools of technology. Until you
22 retire you may not discuss the case with anyone, even your
23 fellow jurors.

24 After you retire to deliberate, you may then begin
25 discussing the case with your fellow jurors, but you cannot

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1 discuss it with anyone else until you have returned a verdict
2 and the case has ended.

3 The parties are entitled to have you personally render
4 a verdict in this case on the basis of your independent
5 evaluation of the evidence presented here in the courtroom.

6 Obviously, speaking to others about the case including
7 your family before you deliberate or exposing yourself to
8 evidence outside the courtroom would compromise your service
9 and fairness to the parties. If you become aware that any
10 other juror is violating my instructions, you should bring it
11 to my attention through Mr. Street, but please don't make it
12 known to any other jurors.

13 Finally, I'd like to summarize the stages of the trial
14 for you. First, there would be opening statements. The
15 government would make an opening statement. After that,
16 defense counsel may, but does not have to make an opening
17 statement. And remember, an opening statement is not evidence
18 or argument; it is simply an outline of what the party intends
19 to prove and it's offered to help you follow the evidence.

20 After the opening statements, the government will
21 present its case. The government will cause its witnesses and
22 after each witness testifies on direct examination, defense
23 counsel will have an opportunity to cross-examine.

24 Following the government's case, the defense may
25 present a case. Because of the presumption of innocence, the

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1 defendant is not required to provide any proof. You may not
2 draw any negative inference or hold it against the defendant in
3 any way if the defense decides not to put on a case. The sole
4 issue is whether the government has proved its case beyond a
5 reasonable doubt.

6 After the evidence is completed, the attorneys will
7 give their closing arguments and this is the opportunity for
8 the lawyers to summarize the evidence.

9 After the closing arguments, I'll give you some final
10 instructions and you'll retire to deliberate on your verdict.

11 Please don't make up your mind about what the verdict
12 should be until after I have instructed you on the law at the
13 end of the case and you have gone to the jury room and you and
14 your fellow jurors have discussed the evidence. Keep an open
15 mind until then the parties deserve and the law requires that
16 you give them an opportunity to be fully heard.

17 The hours that we'll be keeping are these: You should
18 be here at 9:30 a.m. each morning, except Thursday morning and
19 we'll have separate instructions for Thursday, and we will
20 begin sharply at 9:45; that means I will bring the jury out at
21 9:45. If someone is not here, we will all sit in our chairs
22 and wait. So it is best to be here by 9:30 so you can come out
23 with everyone at 9:45.

24 We will break around 4:15 or 4:30, usually 4:30.
25 There may be an occasion where we go a little bit over, for

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1 example, to finish up a witness, but there may be days where we
2 finish up a little early if that seems to be the right breaking
3 time.

4 We'll take a one-hour lunch break around 12:30, but
5 again, it depends on where we are in the trial. It may be
6 earlier or later. And we'll take a ten-minute break
7 mid-morning and mid-afternoon. We won't take other breaks, so
8 please plan accordingly.

9 Please be here early and always on time. The lawyers
10 and I will be here no later than 9:30 a.m. to be sure we can
11 start on time as well. If we have issues to discuss we will
12 arrive at 9:15 or 9:00 or whenever we have to arrive in order
13 to finish our business before it's time for you to come out.

14 Having said that, it's time for us to begin with the
15 trial and we have time now for the opening statements and the
16 government may make its opening statement.

17 MS. TEEKEI: Thank you, your Honor.

18 MS. TEEKEI: It was after midnight on March 25, 2013,
19 and Emma Torruella was at home alone and asleep. She woke up
20 to the sound of her name being called from outside.

21 She went to the door. She saw David Barea, her son's
22 father, standing there. But something wasn't right because
23 almost immediately she saw that David's hands were tied behind
24 his back and there were two men standing next to him wearing
25 gloves and hooded sweat shirts, one of them was wearing a mask.

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Opening - Ms. Teekei

1 She could see the other one had a gun in his hand.

2 Emma Torruella's nightmare was about to begin because
3 those two men wanted money, they wanted David's money, and that
4 night they used two guns, they beat David with a hammer, they
5 threatened to kill David and Emma until they got David's money.
6 This man, Antione Chambers, the defendant, was one of the men
7 at Emma's door step that night.

8 You will hear that during the night, the defendant
9 kidnapped Emma, he forced her into a car and drove her to her
10 mother's apartment where some of David's money was stashed. He
11 forced her to take him inside of that apartment where her
12 children were staying that night, where her 19-year-old
13 daughter opened the door.

14 He forced Emma to get a bag filled with \$20,000 of
15 cash out of the apartment. He then forced her back to her home
16 where the other robber was guarding David and there, the
17 defendant tied Emma's hands with a scarf, he demanded more
18 money and threatened Emma and David with more violence and then
19 he forced her to kneel to the floor, and finally, he left her
20 home with the other robber, all for \$20,000.

21 Ladies and gentlemen, Antione Chambers, the defendant,
22 is a robber. He is a kidnapper and he is being prosecuted in
23 this case for robbing and kidnapping David and Emma and using a
24 gun during that robbery and kidnapping. That is why we are
25 here today.

E9tgcha3

Opening - Ms. Teekei

1 Here is what the evidence will show: Over the course
2 of this trial, you will learn why the defendant and his robbery
3 crew targeted David Barea. You will learn that David was a
4 drug dealer and like many drug dealers he had cash that came
5 from his drug-dealing that made him a target for other
6 criminals. Some time after mid-night on March 25, 2013, David
7 went to an apartment in the Bronx to pick up money from a prior
8 drug deal. He called Tyrone Brown, another drug-dealer from
9 the neighborhood and agreed to meet at Brown's apartment.

10 But what David didn't know is that shortly after that
11 call, Brown called the defendant and as David was inside of
12 Brown's apartment, the defendant and his partner-in-crime were
13 standing outside, faces covered wearing hooded sweat shirts,
14 jackets and gloves.

15 And as David was leaving Brown's apartment, the
16 defendant and another robber pushed David inside, beat him,
17 pointed their guns at him and threatened to kill him for his
18 money. You will learn that after the robbers took
19 approximately \$800 from David's pockets, they forced David into
20 a car where another robber was waiting, a fourth member of the
21 robbery crew, a man who wore his mask the whole night. You
22 will learn that the defendant and two other robbers took David
23 to where Emma lived. Why? Because David had told them he had
24 money stashed there, but there wasn't money in that apartment.
25 They ransacked Emma's bedroom, a closet, a safe.

E9tgcha3

Opening - Ms. Teekei

1 When the defendant and one of the robbers couldn't
2 find the money, they beat David more. They hit him with a
3 hammer on his legs. They threatened him. They threatened Emma
4 until finally David and Emma told the men where the money was:
5 Hidden at Emma's mother's house.

6 You'll learn that while another robber guarded David,
7 the defendant forced Emma into a car where a fourth robber was
8 waiting. He drove to Emma's mother's apartment. During that
9 car ride, the defendant uncovered his face and Emma saw exactly
10 who her kidnapper was.

11 The defendant, face still uncovered, walked with Emma
12 to her mother's door. She knocked, and Emma's daughter came to
13 the door. Emma asked her daughter to open the door trying to
14 reassure her and Emma's daughter didn't know what was going on
15 at that moment, but she got a good look at the defendant that
16 night.

17 You will learn that Emma then got a backpack of
18 \$20,000 in cash, David's cash from her mother's apartment and
19 fearful for her life, she gave the bag to the defendant. He
20 grabbed her by the neck and forced her back into the car. He
21 drove her back to her home where the other robber was still
22 guarding David.

23 And Emma thought her nightmare might be over now that
24 the robbers had gotten their money, but the defendant and the
25 other robber were upset. They wanted more: \$20,000 in cash

E9tgcha3

Opening - Ms. Teekei

1 was not enough. So again, they threatened their victims and
2 again, they hit David with a hammer and again, they pointed
3 guns.

4 The defendant then tied up Emma's hands with her
5 scarf. He made her kneel to the floor and finally, he forced
6 her to lay face-down on her bed. You will learn that Emma
7 thought in that moment she was going to die, and in that moment
8 of terror, the defendant and the other robber left. That is
9 what the evidence will show, that Antione Chambers, the
10 defendant, armed with a gun, robbed and kidnapped Emma and
11 David that night.

12 How will we prove all of this to you? You will hear
13 from the victims Emma Torruella and David Barea. They will
14 describe to you what happened to them that night. They will
15 walk you through their nightmare. In addition, you will hear
16 how Emma described the car that was used during the robbery and
17 kidnapping. In fact, she remembered several digits of the
18 license plate of that car.

19 David Barea will tell you that he is a drug dealer and
20 that is the reason why he was targeted. He's going to tell you
21 all of that himself on the witness stand and you will hear that
22 after the robbers left, he was spared. He didn't call the
23 police immediately and David will tell you why, because at the
24 time of the robbery, he was working as a confidential informant
25 for the New York City Police Department after being arrested a

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Opening - Ms. Teekei

1 few months earlier. So he called the detective he was working
2 with at the NYPD.

3 Let me pause here for a moment to say something about
4 David Barea, a victim in this case. As you heard earlier,
5 Mr. Barea was a drug dealer and he continued to deal drugs even
6 after he became a confidential informant. He will be
7 testifying in this case pursuant to an immunity order which
8 means he cannot be charged for what he says on the witness
9 stand, so please keep all of this in mind and scrutinize his
10 testimony closely. And when you do that, you'll see that his
11 testimony is consistent with the rest of the evidence in this
12 case.

13 Ladies and gentlemen, you will also hear from Emma's
14 daughter. She will tell you about the defendant who was
15 waiting in her living room that night. She will tell you that
16 the defendant tried to look away, but that she stared at him,
17 trying to figure out who he was or whether she had seen him
18 before. She will tell you how she later picked out a picture
19 of that man from a photo array and you will learn that the
20 person she picked was the defendant.

21 Ladies and gentlemen, this trial is not going to be
22 like some of the shows that you have seen on television. You
23 aren't going to hear about any DNA evidence linking the
24 defendant to the scene of the crime because the defendant was
25 wearing gloves during the crimes. He was a professional, but

E9tgcha3

Opening - Ms. Teekei

1 you will hear about the police work done in this case that led
2 to the defendant's arrest. You will also here from the police
3 officers who responded to the scene and began the investigation
4 and were able to identify the members of the robbery crew.

5 You will hear from the FBI agent who eventually found
6 the defendant using phone evidence, interviews of other people
7 and following leads. You will see the duct tape that the
8 defendant and the other robber used to tie up David Barea. You
9 will see the hammer that was recovered from the car the robbers
10 used the night of the robbery. You will also see video
11 surveillance of the robbery from the apartment when David was
12 first kidnapped and beaten.

13 You'll see exactly when two masked men, the defendant
14 and the other robber pushed into the apartment and grabbed
15 David. You'll see how minutes later, David is led out from the
16 apartment by the defendant with his hands tied behind his back
17 and shoved into a car.

18 You are going to hear and see phone evidence that
19 shows how members of this robbery crew kept in touch with each
20 other during the robbery. You'll hear from an FBI agent who
21 will track the defendant's phone on the night of the robbery to
22 the location of the robbery at the time of the robbery and then
23 back to the defendant's house in the Bronx.

24 You will also see records that show that David Barea
25 and Tyrone Brown, the tipster, were in contact with each other

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Opening - Ms. Teekei

1 just before they met up at Brown's apartment and the phone call
2 where Brown tipped off the defendant about robbing David.

3 And you will learn about how law enforcement agents
4 tried to find the defendant and place him under arrest. You'll
5 learn that the defendant fled. He went underground. While
6 they were looking for him, the agents found the car the
7 defendant had been driving the night of the robbery and
8 kidnapping. The car that Emma had described with the license
9 plate numbers that Emma had described, the car that was
10 registered to the defendant's girlfriend. And when he was
11 finally captured, the defendant was carrying a fake driver's
12 license in someone else's name.

13 Ladies and gentlemen, this is not going to be a long
14 trial and it's not going to be a complicated trial, that's
15 because the evidence is straightforward. It shows beyond
16 reasonable doubt that the defendant, armed with a gun, robbed
17 and kidnapped David and Emma.

18 At the end of this trial, we will have the chance to
19 speak with you again about the evidence that has been presented
20 and explain why it establishes the defendant's guilt. Between
21 now and then, I'm going to ask you to do just three things:
22 First, listen to Judge Schofield's instructions on the law and
23 follow them carefully. Second, pay close attention to all the
24 evidence. Third, use your good judgment and common sense, the
25 same common sense that you use in your every day lives as New

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Opening - Ms. Teekei

1 Yorkers.

2 When you do these three things, we are confident that
3 the government will get a fair trial, that the defendant will
4 get a fair trial and that you will return the only verdict that
5 is consistent with the evidence in this case, that the
6 defendant is guilty.

7 THE COURT: Thank you.

8 Mr. Dratel.

9 MR. DRATEL: Thank you, your Honor.

10 Good afternoon, ladies and gentlemen. My name is
11 Joshua Dratel. I represent Antione Chambers, the defendant in
12 this case.

13 The opening statement is a little bit of a preview. I
14 don't even have to give one. We don't have to do anything. I
15 could not ask a single question during the trial. The
16 government would still have the burden of proof beyond a
17 reasonable doubt. The presumption of innocence rests with
18 Mr. Chambers now and I submit to you it will never be overcome.

19 You have to keep an open mind because that presumption
20 of innocence is a critical issue in the context of criminal
21 trials in this country. And the reason I mention that is, you
22 hear one side; maybe you think, wow, that sounds pretty
23 compelling or not. You just have to wait for cross-examination
24 to understand what the full story may be.

25 So just to give you one example about

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Opening - Mr. Dratel

1 cross-examination, about making up your mind too early, not
2 keeping an open mind, not using your common sense, how you can
3 run into problems that way, let's talk about that eyewitness
4 identification.

5 One of the eyewitness identifications of Mr. Chambers
6 was on the third try. First photo array, no positive ID. Then
7 what happened? They showed him a photo of Mr. -- they showed
8 the witness a photo of Mr. Chambers alone, only Mr. Chambers.
9 The witness knew his name from the photo, Googled him. Then on
10 the third try, wow, positive ID. That's what you'll hear. Let
11 me tell you what that means: As you listen to the evidence, as
12 you take it in, and you'll see that video, that security video,
13 you won't be able to tell who is who or anything. You won't be
14 able to identify Mr. Chambers because he wasn't there.

15 There's really no dispute about some of the
16 fundamental issues in the case, which is that there was a
17 robbery and Mr. Barea was taken from Mr. Brown's house to his
18 home and then Mr. Torruella was taken from their home to her
19 mother's home; there's no dispute about that. The problem with
20 the case is that he wasn't there.

21 You will not hear anything except tainted IDs and weak
22 circumstantial evidence, and the reason there will be so much
23 circumstantial evidence is because there will be no real
24 evidence connecting Mr. Chambers to the crime.

25 Witness credibility it's very important in

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Opening - Mr. Dratel

1 cross-examination and even on direct, but on cross-examination
2 in particular to listen for the material inconsistencies with
3 respect to what happened that night, that you will not be able
4 to conclude beyond a reasonable doubt that it's Mr. Chambers as
5 the second perpetrator in the apartment, in her mother's
6 apartment. And the account of the events and the description
7 of that person can't be the same person. That's what the
8 evidence will show you: Can't be him.

9 Now, other ways to judge credibility, not just
10 inconsistencies, but also incentives. What are the incentives
11 for the witnesses to testify in the manner that they testify
12 for the prosecution in their own mind, not what the government
13 wants but what they perceive is to their advantage?

14 The prosecutor already told you about Mr. Barea. What
15 kind of person he is, the life he leads? This is a guy who is
16 working for the NYPD as an informant, unbeknownst to them,
17 fooling police officers every day, dealing drugs, continuing
18 his drug operation while he's an informant. What do you think
19 he has at stake in this case as you listen to the evidence?

20 Ms. Torruella, his girlfriend, I'll tell you one
21 thing: When we come back for summation, when we talk about
22 her, you'll find this is a woman who hides her boyfriend's drug
23 proceeds in the amount of \$20,000 under her mother's bed.

24 Circumstantial evidence, the judge gave you one
25 example. There are other examples of circumstantial evidence

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Opening - Mr. Dratel

1 that have alternatives beyond just the obvious one that if you
2 come in and it's sunny and then you see somebody with an
3 umbrella, it's been raining outside. There may not be any
4 other explanation.

5 Circumstantial evidence goes well beyond that. There
6 are examples of circumstantial evidence you'll see in this
7 case, there are other alternatives and you won't be able to
8 conclude beyond a reasonable doubt that those alternatives
9 match what the government is going to want you to believe about
10 phone records, about phones, about timing, about a lot of
11 different things.

12 It's not just the evidence, it's also the lack of
13 evidence; that's an important aspect of this case as well. And
14 in that context, circumstantial evidence goes both ways. DNA,
15 the government brought out DNA, but they don't have DNA, even
16 though they tested Mr. Chambers for the DNA on the duct tape.
17 Negative. Circumstantial evidence goes both ways.

18 There will be no one, other than these tainted IDs,
19 these contrived IDs, these repeated attempts at an ID and even
20 still, you'll see such material differences that it cannot be
21 Antione Chambers. No one else puts Mr. Chambers there.
22 There's been nothing else to connect, nothing found on him when
23 he was arrested that connects him to this crime in any way.

24 I'm confident that when you've heard all the evidence
25 and, again, I'll get to speak to you again and we'll talk about

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Opening - Mr. Dratel

1 the evidence and I'll give you the defense position on it, go
2 over it, but I'm confident there will be only one conclusion
3 that you can draw, that Mr. Chambers -- and this is consistent
4 with your common sense, consistent with the evidence,
5 consistent with the judge's instructions -- only one
6 conclusion: Mr. Chambers is not guilty of all the charges
7 against him.

8 Thank you very much.

9 THE COURT: Thank you, Mr. Dratel.

10 Ladies and gentlemen, that is a preview of our trial.
11 We'll see you all hear at 9:30 tomorrow morning. Remember,
12 don't talk to anyone about the case. Don't look at anything
13 about the case and we'll see you tomorrow.

14 I'm not sure about what the temperature in the
15 courtroom will be. Sometimes people are happier if they have
16 sweaters just as an option. I also allow people to have water
17 in the courtroom, so if you want to bring in a bottle of water
18 with you, that's not a bad idea either. Thank you very much.

19 (Jury excused)

20 (Open court; jury not present)

21 THE COURT: Let's be seated. So, let me ask the
22 government what's the plan for tomorrow?

23 MR. ARAVIND: Your Honor, we have several witnesses
24 tomorrow. We're going to start with Ms. Emma Torruella. She
25 will be our first witness, followed by Detective Ellis Deloren

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Trial

1 with the NYPD. There is a possibility of another individual
2 who was subpoenaed today and met with law enforcement agents.
3 If he comes tomorrow we intend to put him on, Cantrell
4 Ferguson.

5 THE COURT: I'm sorry. If he comes tomorrow, you
6 intend to put him on and his name is?

7 MR. ARAVIND: Kentrell Ferguson.

8 THE COURT: Who is he?

9 MR. ARAVIND: He's a an individual that knows
10 Mr. Chambers.

11 THE COURT: Okay.

12 MR. ARAVIND: He received a subpoena. We have not had
13 a chance to meet with him. I understand he met with other law
14 enforcement agents. Can you give us one moment. And then
15 Officer Whelan with the NYPD and then we believe we'll get to
16 David Barea tomorrow as well. There's also a possibility that
17 Isaac Nelson, who is another civilian witness, will be
18 appearing tomorrow, and if he does and we have a chance to meet
19 with him, we'll put him on tomorrow.

20 (Continued on next page)

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22
23
24
25

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1 THE COURT: With respect to exhibits, I have your
2 witness list which I received through Mr. Street and I have the
3 government exhibit list.

4 Let me ask this. Mr. Dratel, are there exhibits that
5 you can stipulate to as far as admissibility?

6 MR. DRATEL: We have stipulated to certain things,
7 your Honor, and I'll review it again this evening to make sure
8 as to whether I have objections to a particular exhibit.

9 THE COURT: What exhibits are we anticipating
10 tomorrow? Because I'd love to not spend time dancing around
11 introducing exhibits if there is really no need to do that.

12 MR. ARAVIND: It will be mostly for Ms. Torruella.
13 It's going to be a bunch of photographs which I don't think
14 should pose a problem. There will be the initial positive
15 photo identification that we do intend to bring in.

16 With respect to Mr. Barea, same thing. I think it's
17 going to be mostly photographs. There was a hammer seized that
18 Detective Deloren will testify to, as well as drugs that were
19 seized from the apartment that Mr. Brown was eventually found
20 in.

21 I was remiss. We also may be calling Detective Ayala,
22 depending on his timing. He is one of the NYPD detectives who
23 was responsible for the investigation of Mr. Barea. And his
24 purpose would be to talk about that stop in January when
25 Mr. Barea was stopped and then became a CI, as well as the

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1 wiretap on Mr. Barea's phone. And we intend to put in five
2 calls that involve Mr. Barea and Tyrone Brown in the months
3 leading up to January, which is when the wire ended and March
4 again is when the robbery took place.

5 THE COURT: If counsel could confer with each other
6 either after we adjourn this evening or in the morning and try
7 to stipulate to the admissibility of as many of those as you
8 can and let me know in the morning, we can admit them into
9 evidence before the jury comes out. Obviously, if you have
10 objections, then we can deal with them as they come up.

11 MR. DRATEL: We have stipulated to some of that. Some
12 of that we have stipulated to avoiding the necessity of having
13 foundation witnesses and things like that. Other things may
14 involve some relevance questions; for example, these phone
15 conversations with Mr. Brown and Mr. Barea that occur in 2012.
16 I don't know the relevance. I don't know the relevance of the
17 drugs found in Mr. Brown's apartment either.

18 THE COURT: Here is the thing. We are not going to
19 have side bars. If there are issues that you anticipate, we
20 should talk about them now.

21 MR. DRATEL: I object to the relevance of the
22 Brown/Barea conversations and the drugs found in Mr. Brown's
23 apartment. I don't see what they have to do with this case.
24 Pretty discrete robbery.

25 THE COURT: I obviously don't know what's in the

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1 Brown/Barea conversations, but I'll hear from the government on
2 those issues.

3 MS. TEEKEI: Thank you, your Honor. They are five
4 relatively short wire intercepts when Mr. Barea was being
5 investigated by the NYPD. They establish the relationship of
6 Mr. Barea and Mr. Brown as Mr. Barea will be the one who sold
7 the drugs to Mr. Brown and in that way corroborate the
8 relationship between Mr. Barea and Mr. Brown that Mr. Barea
9 will be testifying to. So it is for that reason and because
10 Mr. Brown was part of this conspiracy, for that reason, we
11 intended to introduce them through Mr. Barea.

12 THE COURT: It's basically to prove that Mr. Barea
13 sold drugs to Mr. Brown?

14 MS. TEEKEI: Yes, your Honor. And it's important to
15 the narrative of their relationship why Mr. Barea was at
16 Mr. Brown's apartment the night of the robbery and why the
17 robbers were there, their ongoing continuing relationship.

18 THE COURT: So that sounds relevant to me, Mr. Dratel.
19 To the extent there is an objection on relevance grounds, I
20 reject it. And what about the drugs in Mr. Brown's apartment?
21 What is the relevance of that?

22 MS. TEEKEI: Similarly, your Honor, when Mr. Brown was
23 arrested, 1810 Watson Avenue, he had in his possession cocaine.
24 It just confirms that he was a drug dealer. And while we don't
25 know the source of the cocaine that was in the apartment when

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1 he was arrested, still, his relationship as a drug dealer and
2 his relationship as a drug dealer who received his supply from
3 Mr. Barea, among maybe other people, is the relevance of that
4 evidence.

5 THE COURT: I guess what I'm not clear on is why you
6 have to introduce the drugs to make that point. I see
7 Mr. Barea is going to talk about it. Are we going to have a
8 bag of cocaine that the jury passes around and looks at?

9 MS. TEEKEI: Sure, your Honor. It goes to the
10 narrative of Mr. Barea's relationship with Mr. Brown and
11 corroborates Mr. Barea's statements about Mr. Brown's role as a
12 drug dealer. And we would consent to a limiting instruction,
13 your Honor, as to those drugs.

14 MR. ARAVIND: Mr. Chambers is not charged in the
15 narcotics conspiracy.

16 MS. TEEKEI: Right. Exactly.

17 THE COURT: Mr. Dratel, is there anything you want to
18 say or add?

19 MR. DRATEL: No, your Honor.

20 THE COURT: To the extent there is an objection to the
21 drugs on relevance grounds, I'll allow the drugs. And I will
22 plan to give a limiting instruction.

23 Are there other issues that you envision right now,
24 Mr. Dratel?

25 MR. DRATEL: Not particularly in terms of specific

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1 evidence, but I will probe the government.

2 One other thing is a limiting instruction also in the
3 context of a stipulation about communications that Mr. Chambers
4 had from MDC. In other words, they are putting in a telephone
5 call from MDC and something about e-mails from MDC.

6 THE COURT: Are those coming in tomorrow?

7 MR. DRATEL: I am not sure they are coming in
8 tomorrow. You are just asking about the evidence in general.

9 THE COURT: I know nothing about them. Do you want to
10 comment on them?

11 MR. ARAVIND: Sure, your Honor. There is a
12 stipulation that the parties have agreed to in which there is a
13 call. Mr. Chambers is receiving a call or making a call from
14 the MDC, and there is a reference to Twizzie. One of the key
15 issues at trial is establishing Mr. Chambers' identity and how
16 the agents eventually get to Mr. Chambers is through Tyrone
17 Brown's phone that has a contact named Twizzie. So the issue
18 of who is Twizzie is of the utmost importance at this trial.
19 That call is significant. We agreed to a stipulation.

20 THE COURT: And the stipulation is that --

21 MR. DRATEL: It's not a relevance objection. It's
22 about a limiting instruction because it shows that he's in
23 custody. That's what it's about.

24 MR. ARAVIND: We are happy. If Mr. Dratel wants to
25 propose something and it's acceptable, we will be happy with a

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1 limiting instruction.

2 THE COURT: If you could propose a limiting
3 instruction for the government to look at it, it would make my
4 life easier because I am not sure exactly what it is you want
5 me to say.

6 MR. ARAVIND: Your Honor, since we are on the topic of
7 evidentiary issues that are going to come up tomorrow, we had a
8 conversation with Mr. Dratel yesterday about the scope of
9 Detective Deloren's testimony. And in particular we were not
10 intending to elicit from Detective Deloren about the search of
11 Brown's apartment at 1338 Croes Avenue. As the Court is well
12 aware, that evidence was suppressed. In speaking to Mr.
13 Dratel, he indicates that he does want to bring that up in
14 cross-examination. And we have two very significant objections
15 to that, your Honor. First is on hearsay grounds and, second,
16 is on 403 grounds.

17 With the Court's permission, I can sort of explain
18 what our objections are.

19 THE COURT: Sure.

20 MR. ARAVIND: I expect that Mr. Dratel, and he can
21 tell me or tell the Court what he is going to do, but he is
22 going to make some reference to the fact that that evidence was
23 suppressed, the fact that the evidence was suppressed.

24 THE COURT: Why don't we take turns here.

25 Mr. Dratel, what is your plan for this evidence? And

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1 then I'll hear what the government's objection is to that.

2 MR. DRATEL: It's about credibility.

3 THE COURT: It's about credibility and you propose to
4 say what?

5 MR. DRATEL: I'm trying not to forecast the
6 cross-examination. It's about the way --

7 THE COURT: It's about credibility and that search.

8 MR. DRATEL: That's correct. It's not about the
9 Court's ruling. It's about his representations.

10 THE COURT: You are not going to allude to the Court's
11 ruling?

12 MR. DRATEL: No.

13 MR. ARAVIND: Your Honor, I think we have a problem of
14 sort of going down the rabbit hole here. We are trying to
15 limit our testimony of the direct. I think opening up this
16 line of testimony and having Mr. Dratel on the first instance
17 talk about a possible search where we have not elicited
18 anything from Detective Deloren about that search, consistent
19 with your Honor's ruling that that evidence is suppressed, is
20 problematic. So the objection, I think, from the government's
21 perspective is, first, that area is very much a Rule 403 issue.
22 It is a side show. It is going to be a mini trial.

23 THE COURT: The problem is, it's hard to tell if it's
24 a 403 issue without knowing exactly what it is.

25 MR. DRATEL: I would be happy after direct to preview

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1 it for you. I don't want to see him weasel out from under it
2 before we have had a chance.

3 MR. ARAVIND: He is not going to talk about it.

4 THE COURT: But he is going to be crossed about it
5 possibly. I think that's what Mr. Dratel is concerned about.

6 MR. ARAVIND: I think there is a problem from the
7 government's perspective, if he is going to get crossed about
8 it, Detective Deloren is our witness. We think we should be
9 able to front part of that and we don't know what the cross is
10 going to be. I understand that Mr. Dratel is holding his cards
11 close to his chest, but we are put in a very difficult position
12 because I think there is a real danger of jury confusion if we
13 go through a direct examination, explain sort of investigative
14 steps that Detective Deloren has taken, and then Mr. Dratel
15 starts talking about a search at 1338 Croes Avenue, which is a
16 very important location, and actually the initial crime scene
17 in this case. And so I think there is a real concern about
18 jury confusion here. And in the absence of some additional
19 proffer from Mr. Dratel as to what his cross-examination is
20 going to be, it's problematic.

21 THE COURT: You and I can both imagine what his
22 cross-examination would be. He is going to ask about what
23 prompted Detective Deloren to do what he did on the day of the
24 search, I presume. And I need to think about this a little bit
25 more because this is all coming at me sort of quickly. But it

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1 seems to me that you're entitled to front that if he intends to
2 cross on it and that you can do that without knowing precisely
3 what it is he is going to ask.

4 MR. ARAVIND: Then that's how we will operate, your
5 Honor. We will elicit the fact that he responded to that
6 location. I know your Honor did not permit a suppression
7 hearing on this issue many, many months back. We respect that
8 ruling. But what we intend to elicit is that Detective Deloren
9 went to that location, he believed that someone was inside, and
10 that's why he entered.

11 THE COURT: As I recall, I had an affidavit to that
12 effect, so I understood that.

13 MR. ARAVIND: You had an affidavit not from anyone
14 from the government. You had an affidavit from Mr. Brown.

15 THE COURT: I think, though, that there was -- I don't
16 remember exactly what it was, but there was something that
17 explained the reasoning and the basis for his exigent
18 circumstance explanation.

19 MR. ARAVIND: I confess I wasn't the prosecutor
20 handling this case at that time. But my understanding was that
21 the Court made a ruling based on the papers and without having
22 testimony from Detective Deloren.

23 And so the government is a little bit concerned about
24 Mr. Dratel making arguments about Detective Deloren's
25 credibility without any sort of record as to Detective

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1 Deloren's view about that particular stop and search.

2 THE COURT: As I understand it, Mr. Dratel is not
3 going to make any comment about the Court's suppression or
4 about any findings by the Court, but he is going to ask him, I
5 presume, about the search to get at matters of credibility, and
6 you can certainly ask about the search to front that.

7 Do I have that right, Mr. Dratel?

8 MR. DRATEL: Yes, your Honor.

9 THE COURT: Just so it's clear, there were papers
10 before me that explained the basis and the reasoning for
11 Officer Deloren's entering the apartment in the first instance
12 and then obtaining a search warrant afterwards. And I believe
13 there was no hearing because the government said several times
14 that they didn't need or want a hearing. So based on that, I
15 ruled on the papers.

16 MR. ARAVIND: In retrospect, that was probably a poor
17 decision. But at the time I think we relied on the complaint
18 and some of the arrest paperwork.

19 THE COURT: But I presume none of that will be in
20 front of the jury. The only things that could be in front of
21 the jury are the facts of what happened and the facts of what
22 were in his head.

23 MR. ARAVIND: I guess the final question that we have
24 on this issue for the Court is, can we make some reference to
25 items that were found in that apartment. Again, it completes

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1 the narrative of that search which Mr. Dratel wants to bring
2 out on cross.

3 MR. DRATEL: It's only for credibility. It's
4 extrinsic evidence at that point. I don't know why it would
5 come in. It's about credibility. It's not really about the
6 search itself. It's really about the preliminaries that led up
7 to the search. It's not about the actual search. I'm not
8 going to talk about the execution of the search.

9 THE COURT: How about when he entered the house. As I
10 recall, he entered the house, saw some things, left and got the
11 warrant.

12 MR. DRATEL: It's probably going to predate that, but
13 it also depends -- there are a lot of things it depends on.

14 THE COURT: Let's do this. Let's not talk about
15 anything that he saw or found. But if Mr. Dratel opens the
16 door to that, then, obviously, you can follow up on it.

17 MR. ARAVIND: Very good, your Honor.

18 MR. DRATEL: Very good, your Honor.

19 THE COURT: Anything else of an evidentiary nature or
20 anything else that is going to require a ruling that I need to
21 hear about outside the presence of the jury?

22 MR. ARAVIND: No, your Honor. The final note from us
23 is that some of our witnesses, because they received subpoenas
24 to arrive today, it's a little bit a makeshift process. But we
25 are happy to provide Mr. Dratel with a list of our witnesses

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1 once we sure that up this evening, and we are happy to provide
2 that notice to the Court as well.

3 THE COURT: That would be great. Thank you.

4 Mr. Dratel, anything else?

5 MR. DRATEL: No. That's it, your Honor.

6 THE COURT: We are adjourned. I don't expect other
7 issues for us to talk about tomorrow. But if you think of
8 anything that we must talk about, I don't want to talk about it
9 on the jury's time, so please send an e-mail to all of us. And
10 absent an e-mail like that, we will meet at 9:30.

11 Thank you. We are adjourned.

12 (Adjourned to Tuesday, September 30, 2014, at 9:30
13 a.m.)

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